ITEM 3
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7 as added or amended by Statutes 1979, Chapter 282, Statutes 1980, Chapters 40 and1354, Statutes 1981, Chapters 371, 649 and 1093, Statutes 1982, Chapter 525, Statutes 1983, Chapters 753 and 800, Statutes 1984, Chapters 1234 and 1751, Statutes 1985, Chapter 759 and 1587, Statutes 1986, Chapters 886, 1258 and 1451, Statutes 1987, Chapters 917 and 1254, Statutes 1989, Chapter 83 and 711, Statutes 1990, Chapter 1263, Statutes 1996, Chapter 277, Statutes 1999, Chapter 390, and Statutes 2002, Chapters 1075 and 1084

Title 2, California Code of Regulations Sections 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2 as added or amended by Registers 80-16, 80-26, 81.18, 82-31, 86-9, 86-45, 86-49, 86-52, 87-17, 87-46 and 03-03

Deferred Maintenance Program Handbook of 2003

Deferred Maintenance Programs

(02-TC-44)

Clovis Unified School District, Claimant

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EXHIBIT A

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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STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-44

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person

Keith B. Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, California 92117

Telephone Number

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

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

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

1084/02 Deferred Maintenance Programs

See: Attachment

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

Name and Title of Authorized Representative

William McGuire, Associate Superintendent

Telephone No.

Voice: 559-327-9110
Fax: 559-327-9129

Signature of Authorized Representative

X Bill McGuire

Date:

June 23, 2003

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	
	)	No. CSM _____
Clovis Unified School District	)	
Test Claimant	)	Chapter 1084, Statutes of 2002
	)	Chapter 1075, Statutes of 2002
	)	Chapter 390, Statutes of 1999
	)	Chapter 277, Statutes of 1996
	)	Chapter 1263, Statutes of 1990
	)	Chapter 711, Statutes of 1989
	)	Chapter 83, Statutes of 1989
	)	Chapter 1254, Statutes of 1987
	)	Chapter 917, Statutes of 1987
	)	Chapter 1451, Statutes of 1986
	)	Chapter 1258, Statutes of 1986
	)	Chapter 886, Statutes of 1986
	)	Chapter 1587, Statutes of 1985
	)	Chapter 759, Statutes of 1985
	)	Chapter 1751, Statutes of 1984
	)	Chapter 1234, Statutes of 1984
	)	Chapter 800, Statutes of 1983
	)	Chapter 753, Statutes of 1983
	)	Chapter 525, Statutes of 1982
	)	Chapter 1093, Statutes of 1981
	)	Chapter 649, Statutes of 1981
	)	Chapter 371, Statutes of 1981
	)	
	)	(Continued on Next Page)
	)	
	)	Deferred Maintenance Programs
	)	
	)	TEST CLAIM FILING

)	Chapter 1354, Statutes of 1980
)	Chapter 40, Statutes of 1980
)	Chapter 282, Statutes of 1979
)	
)	Education Code Sections 17582, 17583,
)	17584, 17584.1, 17584.2, 17585, 17586,
)	17587 17588, 17589, 17590, 17591,
)	17592, 49410, 49410.2, 49410.5, and
)	49410.7
)	
)	Title 2, California Code of Regulations
)	Sections 1866, 1866.1, 1866.2, 1866.3,
)	1866.4, 1866.4.1, 1866.4.2, 1866.4.3,
)	1866.4.4, 1866.4.6, 1866.4.7, 1866.5,
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)	1866.9.1, 1866.10, 1866.12, 1866.13,
)	1866.14, and 1867.2
)	
)	Deferred Maintenance Program Handbook
	Of January 2003

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." Clovis Unified School District is a "school district" as defined in Government Code section 17519.[1]

[1] Government Code Section 17519, as added by Chapter 1459/84:

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

Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 1084, Statutes of 2002
Deferred Maintenance Programs

Chapter 1084, Statutes of 2002
Chapter 1075, Statutes of 2002
Chapter 390, Statutes of 1999
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Chapter 1354, Statutes of 1980
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Section 1867.2

Deferred Maintenance Program Handbook of January 2003

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for school districts to comply with statutes and regulations to obtain funding for deferred maintenance and for the removal and/or containing of asbestos and lead.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975 there were no state statutes or executive orders in effect regarding deferred maintenance programs.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Chapter 282, Statutes of 1979, Section 18, added Education Code Section 39618[2]. Subdivision (a) provided that each school district may establish an account to

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[2] Education Code Section 39618 as added by Chapter 282, Statutes of 1979, Section 18, effective July 24, 1979, operative July 1, 1980:

"(a) The governing board of each school district may establish an account to be known as the "district deferred maintenance account" in the general fund of the district for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, and the exterior and interior painting of school buildings or such other items of maintenance, as may be approved by the State Allocation Board. Funds deposited in the district deferred maintenance account may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance account for purposes of this section.

(b) Funds deposited in the district deferred maintenance account shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance account, provided that no funds deposited in the district deferred maintenance account pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section."

be known as the "district deferred maintenance account" in the general fund of the district for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings or such other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance account may be received from any source, and shall be accounted for separately and retained in the district deferred maintenance account. Subdivision (b) provides that all funds deposited in the district deferred maintenance account shall be expended only for maintenance purposes.

Chapter 282, Statutes of 1979, Section 19, added Education Code Section 39619[3]. Subdivision (a) requires the Superintendent of Public Instruction to certify to the

[3] Education Code Section 39619 as added by Chapter 282, Statutes of 1979, Section 19, effective July 24, 1979, operative July 1, 1980:

"(a) Whenever a school district has deposited in its deferred maintenance account established pursuant to Section 39618 an amount equal to or greater than that prescribed by this section, and such district's total expenditures and accounts payable for maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, are at least as great as in the previous fiscal year, adjusted in conformance with the percentage change in the Consumer Price Index – All Items, of the Bureau of Labor Statistics of the United State Department of Labor, for that fiscal year, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) in accordance with the greatest need as reflected in the maintenance plans required by Section 39620."

State Allocation Board whenever a school district has deposited in its deferred maintenance account an amount equal to, or greater than, that prescribed by this section, and the district's total expenditures and accounts payable for maintenance, repair, or modernization of existing school buildings are at least as great as in the previous fiscal year. Subdivision (b) requires that the State Allocation Board apportion, from the State School Deferred Maintenance Fund, matching funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

Chapter 282, Statutes of 1979, Section 20, added Education Code Section 39620[4], which requires each district to file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

Chapter 282, Statutes of 1979, Section 21, added Education Code Section

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[4] Education Code Section 39620 as added by Chapter 282, Statutes of 1979, Section 20, effective July 24, 1979, operative July 1, 1980:

"Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over such period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance account shall conform to the plan approved by the State Allocation Board."

39621[5] which requires the board to make available to the Director of General Services such amounts as it determines necessary to provide apportionment assistance from any moneys in the State School Deferred Maintenance Fund.

Chapter 40, Statutes of 1980, Section 2, amended Education Code Section 39618[6]. As amended, subdivision (a) requires the "district deferred maintenance fund" to be a restricted fund.

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[5] Education Code Section 39621 as added by Chapter 282, Statutes of 1979, Section 21, effective July 24, 1979, operative July 1, 1980:

"From any moneys in the State School Deferred Maintenance Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code."

[6] Education Code Section 39618 as amended by Chapter 40, Statutes of 1980, Section 2, effective March 14, 1980:

"(a) The governing board of each school district may establish ~~an account~~ a restricted fund to be known as the "district deferred maintenance ~~account~~ fund" in the general fund of the district for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings or such other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance ~~account~~ fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance ~~account~~ fund for purposes of this section.

(b) Funds deposited in the district deferred maintenance ~~account~~ fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance ~~account~~ fund, provided that no funds deposited in the district deferred maintenance ~~account~~ fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section."

Chapter 40, Statutes of 1980, Section 3, amended Education Code Section 39619[7]. As amended, subdivision (b) no longer requires the apportionment be in accordance with the greatest need as reflected in the maintenance plans. Other technical changes were also made.

Chapter 40, Statutes of 1980, Section 4, added Education Code Section 39619.5[8] to allow the State Allocation Board to reserve up to 5 percent of the funds in

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[7] Education Code Section 39619 as amended by Chapter 40, Statutes of 1980, Section 3, effective March 14, 1980:

"(a) Whenever a school district has deposited in its deferred maintenance ~~account~~ fund established pursuant to Section 39618 an amount equal to or greater than that prescribed by this section, and such district's total expenditures and accounts payable for maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, are at least as great as in the previous fiscal year, adjusted in conformance with the percentage change in the Consumer Price Index – All Items, of the Bureau of Labor Statistics of the United State Department of Labor, for that fiscal year, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) ~~in accordance with the greatest need as reflected in the maintenance plans required by Section 39620.~~"

[8] Education Code Section 39619.5 as added by Chapter 40, Statutes of 1980, Section 4, effective March 14, 1980:

"Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in addition to the apportionments made pursuant to Section 39619, in instances of extreme hardship. An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

the State School Deferred Maintenance Fund for apportionments to school districts in instances of extreme hardship, as defined.

Chapter 40, Statutes of 1980, Section 5, amended Education Code Section 39620 to make technical changes.

Chapter 1354, Statutes of 1980, Section 37.3, amended Education Code Section 39619[9] . As amended, subdivision (a) requires the Superintendent of Public Instruction

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(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious weather damage to the remainder of the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

As a result of the determination made in the preceding paragraph, the State Allocation Board may increase the apportionment to a school district by such amount as it determines necessary to complete the critical project, provided the district agrees that state apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment."

[9] Education Code Section 39619 as amended by Chapter 1354, Statutes of 1980, Section 37.3, effective Sept. 30, 1980:

"(a) Whenever a school district has ~~deposited~~ budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance account established pursuant to Section 39618 an amount equal to, or greater than ~~that prescribed by this section, and such district's total expenditures and accounts payable~~, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, ~~are at least as great~~ as exclusive of categorical aid funds, in either the ~~previous~~1978-79 or 1979-80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the ~~Consumer Price Index – All Items, of the Bureau of Labor Statistics of the United State Department of Labor, for that fiscal year~~ district revenue limit computed pursuant to subdivision (f) of Section 42238, the

to certify to the State Allocation Board whenever a school district has budgeted, exclusive of state matching funds and district funds previously matched in its deferred maintenance account, an amount equal to, or greater than, that amount the district expended from its general fund for maintenance, repair, or modernization of existing school buildings exclusive of categorical aid funds, in either the 1978-79 or 1979-80 fiscal year, adjusted in conformance with the district revenue limit.

Chapter 371, Statutes of 1981, Section 2, amended Education Code Section 39618[10]. As amended, subdivision (a) includes encapsulation or replacement of asbestos materials among the repairs to be funded with the district deferred maintenance fund. Other technical changes were also made.

Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780)"

[10] Education Code Section 39618 as amended by Chapter 371, Statutes of 1981, Section 2:

"(a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund"~~ in the general fund of the district~~ for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, and the exterior and interior painting of school buildings, ~~or~~ encapsulation or replacement of asbestos materials, and such other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section.

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Chapter 649, Statutes of 1981, Section 6, amended Education Code Section 39619.5 to make technical changes.

Chapter 1093, Statutes of 1981, Section 3, amended Education Code Section 39619[11]. As amended, subdivision (b) includes 1/2 percent of adult education funds in the amount to be matched by the State Allocation Board apportionments. Other technical changes were also made.

Chapter 525, Statutes of 1982, Section 1, amended Education Code Section 39619[12]. As amended, subdivision (a) excludes any proceeds from the sale of district

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[11] Education Code Section 39619 as amended by Chapter 1093, Statutes of 1981, Section 3:

"(a) Whenever a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance account established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds, in either the 1978-79 or 1979-80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to ~~subdivision (f) of~~ Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of 1/2 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10."

[12] Education Code Section 39619 as amended by Chapter 525, Statutes of 1982, Section 1:

"(a) Whenever, in any given fiscal year, a school district has budgeted, exclusive

property which were expended for the purpose of the district deferred maintenance account.

Chapter 753, Statutes of 1983, Section 1, amended Education Code Section 39619[13] to add subdivision (c) to provide that a district is not required to budget from local district funds an amount greater than ½ percent of the total general funds and adult education funds to be eligible to receive state aid from the State Allocation Board matching funds.

Chapter 800, Statutes of 1983, Section 1, added Education Code Section 39619.3[14] which provides that a school district shall be eligible to receive an

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of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance account established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978-79 or 1979-80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board."

[13] Education Code Section 39619 as amended by Chapter 753, Statutes of 1983, Section 1:

"(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b) no district shall be required to budget from local district funds an amount greater than ½ percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service."

[14] Education Code Section 39619.3 as added by Chapter 800, Statutes of 1983, Section 1:

apportionment if it meets all of the following criteria:

(a) There are excess revenues which resulted from the sale of surplus sites upon which there was no encumbrance to the board;

(b) The Superintendent of Public Instruction has verified that the district had a fiscal emergency in fiscal year 1982-83, and is expected to have one in the 1983-84 fiscal year, the fiscal emergency was caused primarily by required expenditures, and the district has taken reasonable steps to address the fiscal emergency; and

(c) The base revenue limit of the district can not exceed the revenue limit for each school district in the county.

Chapter 1234, Statutes of 1984, Section 1, amended Education Code Section 39619.5[15] to require that the district have more than 2,500 units of average daily

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"Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 39363, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 39619, if it meets all of the following criteria:

(a) There are excess revenues which resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district had a fiscal emergency in fiscal year 1982-83, and is expected to have one in the 1983-84 fiscal year.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

(c) The base revenue limit of the district does not exceed the limit established by subdivision (e) of Section 42238."

[15] Education Code Section 39519.5, as amended by Chapter 1234, Statutes of 1984, Section 1:

attendance in addition to instances of extreme hardship before it can receive additional State Allocation Board apportionments.

Chapter 1234, Statutes of 1984, Section 2, added Education Code Section 39619.55[16]. Subdivision (a) requires the State Allocation Board to reserve 5 percent of

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"(a) Notwithstanding the limitations of Section 39619 the State Allocation Board may each year reserve an amount not to exceed 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship, if the district had more than 2,500 units of average daily attendance, excluding summer session attendance, in the prior fiscal year. The apportionment shall be in addition to the apportionments made pursuant to Section 39619.

An extreme hardship the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made ~~in the preceding paragraph~~ subdivision (a), the State Allocation Board may increase the apportionment to a school district by ~~such~~ the amount it determines necessary to complete the critical project, provided the district agrees that state apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment."

[16] Education Code Section 39619.55 as added by Chapter 1234, Statutes of 1984, Section 2:

"(a) Notwithstanding the limitations of Section 39619, the State Allocation Board shall each year reserve 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts in instances of extreme hardship, if the district had less than 2,501 average daily attendance, excluding summer session attendance, in the prior fiscal year. The apportionment shall be in

the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts in instances of extreme hardship for districts having less than 2,501 average daily attendance in the prior fiscal year. The apportionment shall be in addition to the apportionments made pursuant to Section 39619. Subdivision (b) provides that in instances of extreme hardship, the State Allocation Board may do any of the following:

(1) Increase the apportionment to an eligible school district by the amount it determines necessary to complete a critical project, and require a contribution by the district;

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addition to the apportionments made pursuant to Section 39619.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project in its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made subdivision (a), the State Allocation Board may do any of the following:

(1) Increase the apportionment to an eligible school district by the amount it determines necessary to complete the critical project, and require a contribution by the district.

(2) Waive repayment by the district.

(3) Reduce state apportionments pursuant to Section 39619 in future years to offset the increased apportionment, unless the board has waived repayment pursuant to paragraph (2)."

(2) Waive repayment by the district; or

(3) Reduce state apportionments in future years to offset the increased apportionment.

Chapter 1751, Statutes of 1984, Section 1, amended Education Code Section 39618[17]. As amended, subdivision (a) added the costs incurred to determine the presence of asbestos and the encapsulation or replacement of asbestos-containing materials for deferred maintenance funding.

Chapter 1751 Statutes of 1984, Section 3, added Education Code Section 39619.6[18] which requires the State Allocation Board to develop board policies for the

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[17] Education Code Section 39618 as amended by Chapter 1751, Statutes of 1984, Section 1, effective Sept. 30, 1984:

"(a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or replacement of asbestos-containing materials, and ~~such~~ any other items of maintenance, ~~as may be~~ approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section.

..."

[18] Education Code Section 39619.6 as added by Chapter 1751 Statutes of 1984, Section 3:

"The State Allocation Board shall develop board policies for the apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410. The policies shall provide for the allocation of funds on a matching basis, or the board may determine, based on each application, to increase the

apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410. The policies shall provide for the allocation of funds on a matching basis, or the board may determine to increase the allocation to any school district by the amount it determines is necessary to complete critical projects.

Chapter 1751 Statutes of 1984, Section 5, added Education Code Section 39619.9[19] which created the Asbestos Abatement Fund and all moneys deposited in this fund are continuously appropriated to be administered by the State Allocation Board for the purpose of making allocations to school districts and county offices of education pursuant to Sections 39619.6 and 49410.

Chapter 1751 Statutes of 1984, Section 7, added Education Code Section 49410[20]. Subdivision (a) provides legislative findings regarding the health risks from

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allocation to any school district by the amount it determines is necessary to complete critical projects. In making policies pursuant to this section, the board may establish funding priorities based on a determination in each instance as to the imminence of the health hazard posed by the asbestos materials."

[19] Education Code Section 39619.9 as added by Chapter 1751 Statutes of 1984, Section 5:

"The Asbestos Abatement Fund is hereby created, and notwithstanding Section 13340 of the Government Code, all moneys deposited in this fund are continuously appropriated to be administered by the State Allocation Board for the purpose of making allocations to school districts and county offices of education pursuant to Sections 39619.6 and 49410."

[20] Education Code Section 49410 as added by Chapter 1751 Statutes of 1984, Section 7:

exposure to asbestos fibers. Subdivision (b) states the legislative intent to provide for

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"(a) The Legislature finds that:

(1) There is substantial scientific and medical evidence that human exposure to asbestos fibers significantly increases the likelihood of contracting cancer and other debilitating or fatal diseases such as asbestosis.

(2) Medical and epidemiological evidence suggests that children exposed to asbestos fibers may be especially susceptible to the environmentally induced diseases associated with the exposure.

(3) Substantial amounts of asbestos materials were used in school construction during the period from 1946 through 1973 for fireproofing, soundproofing, decoration, and other purposes.

(4) When these materials age, deteriorate, or become damaged or friable, they release asbestos fibers into the ambient air. This can result in the exposure of school children and school employees to potentially dangerous levels of asbestos fibers.

(5) The presence of asbestos in the air in concentrations far exceeding the normal ambient levels has been found in schools, especially where the asbestos materials have reached a damaged, deteriorated, or disturbed state as a result of abuse, abrasion, water leakage, or forced air circulation.

(6) In view of the fact that the State of California has compulsory attendance laws for children of school age, and these children must be educated in a safe and healthy environment, the hazard presented by asbestos materials in the schools is of special concern to the Legislature.

(b) As a result of the findings in subdivision (a), it is the intent of the Legislature to provide for the safe and expeditious containment or removal of asbestos materials posing a hazard to health in schools.

(c) As used in this section and Sections 49410.2 and 49410.5, the following terms have the following meanings:

(1) "Asbestos" means naturally occurring hydrated mineral silicates separable into commercially used fibers: specifically chrysotile, amosite, crocidolite, tremolite, anthrophyllite, and actinolite.

(2) "Asbestos materials" means materials formed by mixing asbestos fibers with other products, including, but not limited to, rock wool, plaster, cellulose, clay, vermiculite, perlite, and a variety of adhesives. Some of these materials may be sprayed on surfaces or applied to surfaces in the form of plaster or a textured paint.

(3) "Hazard to health" means that the asbestos material is loose, friable, flaking, or dusting, or is likely to become so within the service life of the material in place."

the safe and expeditious containment or removal of asbestos materials posing a hazard to health in schools. Subdivision (c) defines relevant terms.

Chapter 1751 Statutes of 1984, Section 8, added Education Code Section 49410.2[21] which provides that school districts and county offices of education may apply to the State Allocation Board for funds for the purposes of containment or removal of asbestos materials.

Chapter 1751 Statutes of 1984, Section 9, added Education Code Section 49410.5[22]. Subdivision (a) requires the State Allocation Board to retain all information provided by school districts when making application for funds regarding the actual or

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[21] Education Code Section 49410.2 as added by Chapter 1751 Statutes of 1984, Section 8:

"School districts and county offices of education may apply to the State Allocation Board pursuant to Section 39619.6 for funds for the purposes of containment or removal of asbestos materials posing a hazard to health."

[22] Education Code Section 49410.5 as added by Chapter 1751 Statutes of 1984, Section 9:

"(a) The State Allocation Board shall retain all information provided by school districts making application for funds pursuant to Sections 39619.6, 39619.7, and 39619.8 regarding the actual or estimated cost of inspection and testing for, and encapsulation or removal of, asbestos.

(b) The Legislature finds and declares that:

(1) Federal moneys may be made available to reimburse schools for costs related to asbestos inspection, testing, encapsulation, and removal, and that the distribution of these moneys will be expedited by the early collection of these data.

(2) School districts shall comply with guidelines suggested by the Environmental Protection Agency for the purposes of inspection and testing for asbestos materials, and for the protection and safety of workers and all other individuals during the encapsulation and removal of asbestos."

estimated cost of inspection and testing for, and encapsulation or removal of, asbestos. Subdivision (b) provides legislative findings.

Chapter 759, Statutes of 1985, Section 1, amended Education Code Section 39619.5[23]. As amended, subdivision (a) increases the amount the State Allocation Board may reserve from 5 to 10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts. School

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[23] Education Code Section 39619.5 as amended by Chapter 759, Statutes of 1985, Section 1:

"(a) Notwithstanding the limitations of Section 39619 the State Allocation Board may each year reserve an amount not to exceed ~~5~~10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship~~, if the district had more than 2,500 units of average daily attendance, excluding summer session attendance, in the prior fiscal year~~. The apportionment shall be in addition to the apportionments made pursuant to Section 39619. Not less than one-half of all funds made available by this section shall be apportioned to school districts that had an average daily attendance, excluding summer session attendance, of less than 2,501 during the prior fiscal year.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project~~, provided the district agrees that state apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment~~."

districts with an average daily attendance of less than 2,501 can be considered in instances of extreme hardship and are required to receive not less than one-half of all funds made available by this section. Subdivision (b) was amended to no longer require the district to agree that state apportionments in future years will be reduced to offset the increased apportionment.

Chapter 759, Statutes of 1985, Section 2, amended Education Code Section 39619.55[24] to delete subdivision (a) which was a duplicate of Section 39619.5.

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[24] Education Code Section 39619.55 as amended by Chapter 759, Statutes of 1985, Section 2:

~~"(a) Notwithstanding the limitations of Section 39619, the State Allocation Board shall each year reserve 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts in instances of extreme hardship, if the district had less than 2,501 average daily attendance, excluding summer session attendance, in the prior fiscal year. The apportionment shall be in addition to the apportionments made pursuant to Section 39619.~~

~~An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:~~

~~(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.~~

~~(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.~~

~~(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.~~

~~(b)~~ As a result of the determination made ~~subdivision (a)~~ in Section 39619.5, the State Allocation Board may do any of the following:

(~~1~~a) Increase the apportionment to an eligible school district by the amount it determines necessary to complete the critical project, and require a contribution by the district.

(~~2~~b) Waive repayment by the district, in whole or in part.

Subdivision (b) was amended to allow the State Allocation Board to waive repayment by the district, in whole or in part. Subdivision (c) requires the State Allocation Board to develop and adopt regulations for the application of this section which gives consideration to a school district's financial resources, ongoing deferred maintenance needs, and the nature of the project for which the hardship apportionment is requested.

Chapter 1587, Statutes of 1985, Section 6, added Education Code Section 49410.7[25]. Subdivision (a) provides the factors used to determine the need for

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(3c) Reduce state apportionments pursuant to Section 39619 in future years to offset the increased apportionment~~, unless the board has waived repayment pursuant to paragraph (2).~~".

The State Allocation Board shall develop and adopt regulations for the application of subdivisions (a), (b), and (c). The regulations may give consideration to a school district's financial resources, ongoing deferred maintenance needs, and the nature of the project for which the hardship apportionment is requested.

The waiver authorized in subdivision (b) may be applied by the board to any repayment otherwise required by law, regardless of the apportionment date."

[25] Education Code Section 49410.7 as added by Chapter 1587, Statutes of 1985, Section 6:

"(a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and air monitoring showing an airborne concentration of asbestos in excess of the standard 0.01 fibers/cc and 300 nanograms per cubic meter (ng/m^3) by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher.

(b) For purposes of air monitoring, the operating agency for each public school building in which friable asbestos-containing materials (other than pipe and block insulation) have been identified shall monitor airborne asbestos levels in each sampling area. Each sampling area in which asbestos-containing materials have been identified shall be monitored for at least eight hours during a period of normal building activity. Analysis of samples shall be by Transmission Electron Microscopy (TEM) methods, in accordance with the Environmental Protection Agency provisional method and update,

abatement of friable asbestos or potentially friable asbestos. Subdivision (b) requires the operating agency for each public school building in which friable asbestos-containing materials have been identified to monitor airborne asbestos levels in each sampling area. Subdivision (c) prohibits any public primary or secondary school building in which asbestos abatement work has been performed from being reoccupied until air monitoring has been conducted to show that the airborne concentration of asbestos does not exceed the air monitoring standard. Not less than one month after the

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to measure the number of observable asbestos fibers. The results of this monitoring shall be recorded in terms of the number of visible fibers greater than 5 microns in length per cubic centimeter of air (f/cc) in accord with standard definitions for asbestos monitoring established by the Occupational Safety and Health Administration. The results of the monitoring shall also be recorded in nanograms per cubic meter (ng/m^3).

"Sampling area," as used in this section, means any area, whether contiguous or not, within a building that contains friable material that is homogenous in texture and appearance.

(c) Any public primary or secondary school building in which asbestos abatement work has been performed shall not be reoccupied until air monitoring has been conducted to show that the airborne concentration of asbestos does not exceed the air monitoring standard of subdivision (a). Not less than one month after the reoccupancy of the school building where asbestos abatement work has occurred, the building shall be remonitored to determine compliance with subdivision (b).

(d) "School building," as used in this section, means any of the following:

(1) Structures used for the instruction of public school children, including classrooms, laboratories, libraries, research facilities, and administrative facilities.

(2) School eating facilities and school kitchens.

(3) Gymnasiums or other facilities used for athletic or recreational activities or for courses in physical education.

(4) Dormitories or other living areas of residential schools.

(5) Maintenance, storage, or utility facilities essential to the operation of the facilities described in paragraphs (1) to (4).

(e) School districts and county offices of education may apply for reimbursement from the Asbestos Abatement Fund for the costs of air monitoring completed pursuant to this section."

reoccupancy of the school building where asbestos abatement work has occurred, the building shall be remonitored to determine compliance. Subdivision (d) provides relevant definitions. Subdivision (e) allows school districts and county offices of education to apply for reimbursement from the Asbestos Abatement Fund for the costs of air monitoring completed pursuant to this section.

Chapter 886, Statutes of 1986, Section 30 added, and Chapter 888, Statutes of 1986, Section 5, amended, Education Code Section 39619.2[26]. Subdivision (a) provides that school districts may submit applications to the State Allocation Board for additional deferred maintenance funding. To be eligible for an additional apportionment, a school

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[26] Education Code Section 39619.2 as added by Chapter 886, Statutes of 1986, Section 30 and amended by Chapter 888, Statutes of 1986, Section 5:

"(a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 39619. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the total general funds and adult education funds budgeted by district for the fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds."

district is required to certify that:

(1) The district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid;

(2) An additional claim of not greater than one-half of 1 percent of the total general funds and adult education funds budgeted by district for the fiscal year excluding any amounts budgeted for capital outlay or debt service, but including adult education funds; and

(3) Any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

Subdivision (b) requires the State Allocation Board to establish rules and regulations regarding the formulas used to apportion additional funds. Subdivision (c) provides the legislative intent that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues from the State Treasury pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds.

Chapter 1258, Statutes of 1986, Section 1, amended Education Code Section 39619.3[27] to delete subdivision (c) which required that the revenue limit of the district did

[27] Education Code Section 39619.3 as amended by Chapter 1258, Statutes of 1986, Section 1, effective Sept. 29, 1986:

"Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 39363, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 39619, if it meets all of the

not exceed the limit determined by the county superintendent of schools, and to make other technical changes.

Chapter 1451, Statutes of 1986, Section 5, amended Education Code Section 49410.7[28]. As amended, subdivision (a) provides that air monitoring shall not be required to determine the need for abatement of friable asbestos or potentially friable asbestos, and to make other technical changes.

Chapter 917, Statutes of 1987, Section 11.5, added Education Code Section

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following criteria:

(a) There are excess revenues which resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district ~~has~~ had a fiscal emergency in fiscal year ~~1982-83, and is expected to have one in the 1983-84~~1984-85 or 1985-86 fiscal year.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

~~(c) The base revenue limit of the district does not exceed the limit established by subdivision (e) of Section 42238."~~

[28] Education Code Section 49410.7 as amended by Chapter 1451, Statutes of 1986, Section 5, effective Sept. 30, 1986:

"(a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and bulk samples and air monitoring showing an airborne concentration of asbestos in the school building in excess of the standard 0.01 fibers/cc ~~and 300 nanograms per cubic meter (ng/m^3)~~ by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher. For purposes of reconstruction and rehabilitation projects approved pursuant to Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, air monitoring shall not be required to determine the need for abatement of friable asbestos or potentially friable asbestos."

39618.5[29] which provides that a school district, by resolution with a two-thirds vote, may transfer the excess local funds deposited in that fund to any other expenditure classifications in other funds of the district, whenever the state funds are insufficient to fully match the local funds deposited in the deferred maintenance fund. The resolution must be filed with the county superintendent of schools and the county auditor.

Chapter 1254, Statutes of 1987, Section 1, amended Education Code Section 49410.7[30]. As amended, subdivisions (a) and (b) now include the abatement of

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[29] Education Code Section 39618.5 as added by Chapter 917, Statutes of 1987, Section 11.5:

"Notwithstanding Section 39618, whenever the state funds provided pursuant to Sections 39619 and 39619.2 are insufficient to fully match the local funds deposited in the deferred maintenance fund, the governing board of each school district may transfer the excess local funds deposited in that fund to any other expenditure classifications in other funds of the district. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor."

[30] Education Code Section 49410.7 as amended by Chapter 1254, Statutes of 1987, Section 1, effective Sept. 27, 1987:

"(a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and bulk samples and air monitoring showing an airborne concentration of asbestos in the school building in excess of the standard 0.01 fibers/cc by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher. For purposes of reconstruction and rehabilitation projects approved pursuant to Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, for which asbestos abatement related work commenced on or after October 2, 1985, and for purposes of abating asbestos contained in pipe and block insulation, air monitoring shall not be required to determine the need for abatement of friable asbestos or potentially friable asbestos.

(b) For purposes of air monitoring, the operating agency for each public school

asbestos contained in pipe and block insulation.

Chapter 83, Statutes of 1989, Section 5, amended Education Code Section 39619[31], subdivisions (b) and (c), to change the calculation of the amount of matching

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building in which friable asbestos-containing materials (other than pipe and block insulation or materials to be abated during rehabilitation or reconstruction projects as specified in subdivision (a)) have been identified shall monitor airborne asbestos levels in each sampling area. Each sampling area in which asbestos-containing materials have been identified shall be monitored for at least eight hours during a period of normal building activity. Analysis of samples shall be by Transmission Electron Microscopy (TEM) methods, in accordance with the Environmental Protection Agency provisional method and update, to measure the number of observable asbestos fibers. The results of this monitoring shall be recorded in terms of the number of visible fibers greater than ~~5 microns~~1 micron in length per cubic centimeter of air (f/cc) in accord with standard definitions for asbestos monitoring established by the Occupational Safety and Health Administration.

"Sampling area," as used in this section, means any area, whether contiguous or not, within a building that contains friable material that is homogenous in texture and appearance.

..."

[31] Education Code Section 39619 as amended by Chapter 83, Statutes of 1989, Section 5:

"(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of 1/2 percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by the ~~district~~ districts of similar size and type, as defined in section 42238.4, for the prior fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than 1/2 percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by the ~~district~~ districts of similar size and type, as defined in section 42238.4 for the prior fiscal year, exclusive of any amounts budgeted for capital outlay or debt service."

local funds used for allocation for districts of similar size and type.

Chapter 83, Statutes of 1989, Section 6, amended Education Code Section 39619.2[32] to change the calculation of the amount of matching local funds used for certification for districts of similar size and type.

Chapter 711, Statutes of 1989, Section 1, amended Education Code Section 39619.3 to make technical changes.

Chapter 1263, Statutes of 1990, Section 13, amended Education Code Section 39619.5[33] to add subdivision (c), which provides the State Allocation Board, where all

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[32] Education Code Section 39619.2 as amended by Chapter 83, Statutes of 1989, Section 6:

"(a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 39619. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the district's current-year revenue limit average daily attendance, of the total general funds and adult education funds budgeted by district for the fiscal year excluding any amounts budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

..."

[33] Education Code Section 39619.5 as amended by Chapter 1263, Statutes of 1990, Section 13:

"(c) Notwithstanding subdivision (a), in any fiscal year in which the State Allocation Board has apportioned all funding from the State School Deferred Maintenance Fund for which school districts have qualified under Section 39619, the

funding from the State School Deferred Maintenance Fund has been apportioned to qualifying school districts, may apportion any amount remaining in that fund for the purposes of extreme hardship school districts.

Chapter 277, Statues of 1996, Sections 6 and 3, repealed and renumbered the above Education Code Sections, operative January 1, 1998, as follows:

Former Education Code:	Renumbered Education Code:
1) 39618	1) 17582
2) 39618.5	2) 17583
3) 39619	3) 17584
4) 39619.2	4) 17585
5) 39619.3	5) 17586
6) 39619.5	6) 17587
7) 39619.55	7) 17588
8) 39619.6	8) 17589
9) 39619.9	9) 17590
10) 39620	10) 17591
11) 39621	11) 17592

Chapter 390, Statutes of 1999, Section 3, added Education Code Section 17584.1[34]. Subdivision (a) requires the governing board of a school district to discuss

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board may apportion any amount remaining in that fund for the purposes of this section."

[34]Education Code Section 17584.1, as added by Chapter 390, Statutes of 1999, Section 3:

proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing. Subdivision (b) requires the governing board of a school district to submit a report to the Legislature, the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board, in any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance.

"(a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside 1/2 of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard."

Subdivision (c) requires the report to include:

(1) A schedule of the complete school facilities deferred maintenance, including a schedule of costs per schoolsite and total costs;

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities have prevented the school district from setting aside sufficient local funds; and

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs.

Subdivision (d) requires copies of the report to be made available at each schoolsite within the school district and to be provided to the public upon request. Subdivision (e) provides that the purpose of this section is to inform the public regarding the local decision making process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard.

Chapter 1075, Statutes of 2002, Section 4, amended Education Code Section 17582[35]. As amended, subdivision (a) now includes the costs incurred to determine the

[35] Education Code Section 17582 as amended by Chapter 1075, Statutes of 2002, Section 4:

"(a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, and any other items of maintenance approved by the State Allocation Board

presence of and removal of lead-containing materials as eligible for deferred maintenance funding. It further includes a facility that a county office of education is authorized to use as eligible for deferred maintenance funding.

Chapter 1075, Statutes of 2002, Section 5, added Education Code Section 17584.2[36] which requires the governing board of the school district to address the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials at a public hearing.

Chapter 1084, Statutes of 2002, Section 1, amended Education Code Section 17584 to make technical changes.

Chapter 1084, Statutes of 2002, Section 2, amended Education Code Section 17591 to make technical changes.

SECTION 3. TITLE 2, CALIFORNIA CODE OF REGULATIONS[37]

Subgroup 12 entitled "State School Deferred Maintenance" was filed on April 18, 1980 as part of Chapter 3, Division 2, of Title 2, California Code of Regulations,

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[36] Education Code Section 17584.2 as added by Chapter 1075, Statutes of 2002, Section 5:

"At the public hearing required pursuant to Section 17584.1, the governing board of the school district shall also address the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials."

[37] Copies of all Title 2 California Code of Regulations cited in this section are attached hereto as Exhibit 4 and are incorporated herein by reference.

commencing at Section1866.

Section 1866[38] (added in 1980 and last amended in 2003) provides relevant

[38] Title 2, California Code of Regulations, Section 1866:

" (a) In connection with the administration of the provisions of California Education Code (EC) Sections 17588 and 17591, inclusive, of Article 1, Chapter 4, Part 10.5, Division 1, Title 1, and for the purpose of these regulations, the terms set forth below shall have the following meanings:
"The Act" means EC Sections 17588 and 17591, above.
"Board" means the State Allocation Board.
"Complete Application" means a district has submitted with the application, all documents to the Office of Public School Construction (OPSC) that are required as identified in the General Information Section of the Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02) and the OPSC has accepted and completed a preliminary approval review.
"Critical Project" shall have the meaning set forth in Section 1866.5.
"Deferred Maintenance" means the repair or replacement work performed on school facility components that is not performed on an annual or on-going basis but planned for the future and part of the Five Year Plan, Form SAB 40-20 (New 04/02).
"District or Applicant School District" shall mean an entity identified in Section 1866.1(a).
"Division of the State Architect" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety, and access compliance.
"Extreme Hardship Grant" means a grant provided by the State to complete the critical project, as provided by EC Section 17587 and Regulation Section 1866.5.2.
"Financial Test" shall have the meaning set forth in Section 1866.5(a).
"Five Year Plan" Shall have the meaning set forth in Section 1866.4.
"Matching Funds" means an amount of funds the district deposits into the "district deferred maintenance fund" to receive either a maximum or prorated basic grant.
"Maximum Basic Grant" means an amount of State funds apportioned by the Board for purposes of the Five Year Plan, Form SAB 40-20 (New 04/02). This amount is based on the formula specified in EC Section 17584(b).
"Prorated Basic Grant" means the prorated amount of the maximum basic grant apportioned by the Board due to insufficient funding for the Deferred Maintenance Program (DMP).
"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the DMP.
"OPSC Deferred Maintenance Extreme Hardship Workload List" means a list of

definitions.

Section 1866.1[39] (added in 1980 and last amended in 2003), provides the

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extreme hardship funding applications authorized by EC Section 17587 for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of the Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02) but not yet included on the DMP Extreme Hardship Unfunded List.
"OPSC Extreme Hardship Unfunded List" means a information list of unfunded critical projects awaiting an Extreme Hardship Grant under the provisions of the DMP.
"OPSC Modernization Workload List" means a list of School Facility Program (SFP) modernization projects for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Form SAB 50-01, Enrollment Certification/Project, (Revised 07/01); Form SAB 50-02, Existing School Building Capacity, (Revised 07/01); Form SAB 50-03, Eligibility Determination, (Revised 07/01); and Form SAB 50-04, Application for Funding, (Revised 09/01), under the SFP.
"Repair" means the work necessary to restore deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes.
"Replacement" means the work necessary to replace those school building systems itemized in "Repair" above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.
"Routine Maintenance" means the school facility component work performed on an annual or on-going basis each year to keep building facilities in proper operating condition.
"School Facility Program (SFP)" means the Leroy F. Green School Facilities Act of 1998.
"SFP Modernization Unfunded List" means an information list of unfunded modernization projects approved under the provisions of the SFP.
"Total Estimated Cost" means an estimated cost of the critical project on which the extreme hardship grant is calculated."

[39] Title 2, California Code of Regulations, Section 1866.1:

"The prerequisites to receiving a grant, as provided by the Act and these regulations, include the following:

prerequisites to receiving a basic or extreme hardship grant which includes:

(a) Operating as a public elementary, unified, or high school district, a County Superintendent of Schools (CSS) that serves any combination of kindergarten through twelfth grade pupils, or a regional occupational center;

(b) The governing board of the school district has established a restricted fund to be known as the "district deferred maintenance fund"; and

(c) The school district has a Board approved Five Year Plan, Form SAB 40-20, which includes the fiscal year of funding.

Section 1866.2[40] (added in 1980 and last amended in 2003) requires an eligible district seeking funding for a Deferred Maintenance Program (DMP) Basic Grant to complete and file with the Office of Public School Construction (OPSC), the Five Year

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(a) Operate as one of the following:
(1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or
(2) A County Superintendent of Schools (CSS) that serves any combination of kindergarten through twelfth grade pupils; or
(3) A regional occupational center identified in EC Section 17592.5; and
(b) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in EC Section 17582(a) and these regulations; and
(c) That the applicant school district has a Board approved Five Year Plan, Form SAB 40-20 (New 04/02) complying with Section 1866.4, which includes the fiscal year of funding."

[40] Title 2, California Code of Regulations, Section 1866.2:

"An eligible district seeking funding for a DMP Basic Grant shall complete and file with the OPSC, the Five Year Plan, Form SAB 40-20 (New 04/02), which is incorporated by reference."

Plan, Form State Allocation Board (SAB) 40-20.

Section 1866.3[41] (added in 1980 and last amended in 2003) requires an eligible district seeking funding for a DMP extreme hardship grant to complete and file with the OPSC, the Extreme Hardship Funding Application, Form SAB 40-22.

Section 1866.4[42] (added in 1980 and last amended in 2003), subdivision (a), sets forth the circumstances which would cause the filing of a revised five year plan. These are:

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[41] Title 2, California Code of Regulations, Section 1866.3:

"An eligible district seeking funding for a DMP extreme hardship grant shall complete and file with the OPSC, the Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02), which is incorporated by reference."

[42] Title 2, California Code of Regulations, Section 1866.4:

"EC Section 17591 establishes the need of filing with the Board a five year plan for deferred maintenance needs of the district. The Five Year Plan, Form SAB 40-20, (New 04/02) is a summary of proposed projects the district plans on completing annually over the next five fiscal years using the basic grant. The fiscal year the plan commences is determined by the fiscal year in which it was filed. New and revised plans are accepted on a continuous basis for the current fiscal year up to the last working day in June. Revisions are not accepted for prior fiscal years.

(a) Under the following circumstances, a revised plan would need to be submitted to the OPSC:

(1) The plan has expired.

(2) Work will be performed that is not listed on the plan or at a school not listed on the plan.

(3) If work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.

(b) A district submitting a new plan or revising a plan under (a) above must be able to certify that the plans and proposals for expenditures of funds, listed on the Five Year Plan, Form SAB 40-20 (New 04/02) submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to EC Section 17584.1(a)."

(1) The plan has expired;

(2) Work will be performed that is not listed on the plan or at a school not listed on the plan; or

(3) If work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant.

Subdivision (b) requires a district submitting a new plan or revising a plan certify that the plans and proposals for expenditures of funds were discussed at a public hearing at a regularly scheduled meeting with the district's governing board.

Section 1866.4.1[43] (added in 1980 and last amended in 2003) provides that the district may include a repair or replacement project in its five year plan, provided it meets all of the following criteria:

(a) It conforms to the deferred maintenance activities authorized in Education Code Section17582(a) or these regulations, and has approached or

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[43] Title 2, California Code of Regulations, Section 1866.4.1:

"The district may include on its Five Year Plan, Form SAB 40-20 (New 04/02) a repair or replacement project, provided it meets all the following criteria:
(a) Conforms to the deferred maintenance activities authorized in EC Section 17582(a) or these regulations, which has approached or exceeded its normal life expectancy or has a history of continued repairs indicating a shortened life expectancy, and;
(b) Performed at a district owned facility, which is used for school purposes. A district that is currently leasing relocatables from the State Relocatable Classroom Program may include deferred maintenance work on the Five Year Plan, Form SAB 40-20 (New 04/02) for these facilities.
(c) Facilities owned by a CSS or leased facilities that are required to be maintained by the CSS, which it is authorized to use pursuant to Article 3 commencing with EC Section 17280, Chapter 3, may be included on the Five Year Plan, Form SAB 40-20 (New 04/02)."

exceeded its normal life expectancy or has a history of continued repairs indicating a shortened life expectancy;

(b) It is performed at a district owned facility, which is used for school purposes. A district that is currently leasing relocatables from the State Relocatable Classroom Program may include deferred maintenance work on the Five Year Plan, Form SAB 40-20 for these facilities: and

(c) The facilities are owned by a CSS or leased facilities that are required to be maintained by the CSS, which it is authorized to use pursuant to Article 3 commencing with EC Section 17280, Chapter 3, may be included on the Five Year Plan, Form SAB 40-20.

Section 1866.4.2[44] (added in 1980 and last amended in 2003) requires the State Allocation Board to apportion basic grants to school districts after July 1 each fiscal year. Subdivisions (a) and (b) provide the formula to determine the maximum basic grant

[44] Title 2, California Code of Regulations, Section 1866.4.2:

"After July 1 each fiscal year, the Board shall apportion to districts a basic grant for the DMP. A maximum basic grant is calculated as stated for each of the following:
(a) School districts and regional occupational centers using the formula set forth in EC Section 17584(b).
(b) CSSs who meet the provisions of EC Sections 17584, 17591 and, if applicable, 17585, an amount equal to one dollar ($1.00) for each one dollar ($1.00) of local funds up to a maximum of one-half percent of the total general funds and adult education funds budgeted by the CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, debt service or revenues that are passed through to other local educational agencies, to the extent of funds legally available pursuant to EC Section 17080.
If sufficient State funding is not available, the Board shall apportion to all districts except those that are receiving a basic grant with an extreme hardship grant, a prorated amount of the maximum. This amount is known as the prorated basic grant."

amount. If sufficient state funding is not available, the Board shall apportion a prorated amount of the maximum.

Section 1866.4.3[45] (added in 1980 and last amended in 2003) requires school districts to deposit a matching share to a basic grant into their District Deferred Maintenance Fund. The district's deposit must be a cash contribution from any non-restricted fund, unmatched carryover, or from the district's restricted Ongoing and Major Maintenance Account. If the district has established an Ongoing and Major Maintenance Account, any annual deposits in excess of 2 1/2 percent into that fund may be used towards the district's matching share. Districts may either: (a) report the excess amount in the Ongoing and Major Maintenance Account being used towards the match;

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[45] Title 2, California Code of Regulations, Section 1866.4.3:

"To receive the basic grant pursuant to Section 1866.4.2, districts are required to deposit a matching share into their District Deferred Maintenance Fund established pursuant to EC Section 17582(a). The State will match this amount dollar-for-dollar not to exceed the basic grant apportioned by the Board. The district's deposit must be a cash contribution from any non-restricted fund, unmatched carryover pursuant to Section 1866.4.4, or from the district's restricted Ongoing and Major Maintenance Account.

If the district has established an Ongoing and Major Maintenance Account under the provisions of EC Section 17070.75(b)(1), any annual deposits in excess of 2 1/2 percent into that fund may be used towards the district's matching share. Districts may either:

(a) Report the excess amount in the Ongoing and Major Maintenance Account being used towards the match on the Certification of Deposits, Form SAB 40-21 (New 04/02), which is incorporated by reference. These funds are not available for eligible deferred maintenance projects listed on the Five Year Plan, Form SAB 40-20 (New 04/02), until transferred into the District Deferred Maintenance Fund.

(b) Transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share on the Certification of Deposits, Form SAB 40-21 (New 04/02). These funds are available to the district to perform work on the Five Year Plan, Form SAB 40-20 (New 04/02)."

or (b) transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share.

Section 1866.4.4[46] (added in 1980 and last amended in 2003) requires the district's governing board to affirm the encumbrance of funds deposited and not matched by the State when carried over to the next fiscal year.

Section 1866.4.6[47] (added in 1980 and last amended in 2003) requires each county superintendent of schools to report the district's deposit on the Certification of Deposits Form which is due no later than 60 days after the maximum or prorated grant is apportioned by the Board.

Section 1866.4.7[48] (added in 1980 and last amended in 2003) requires a district

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[46] Title 2, California Code of Regulations, Section 1866.4.4:

"Carryover of Unmatched State Funds. Any funds deposited and not matched by the State can be carried over to the next fiscal year. A district can apply unexpended, unmatched balances past the next fiscal year under the provisions of EC Section 17583, and then reaffirm by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes. Carryover that has been reported on the Certification of Deposits, Form SAB 40-21 (New 04/02) is considered matched and therefore cannot be applied as carryover in subsequent fiscal years."

[47] Title 2, California Code of Regulations, Section 1866.4.6:

"The CSSs shall report the district's deposit on the Certification of Deposits, Form SAB 40-21 (New 04/02). The Form is due to the OPSC no later than 60 days after the maximum or prorated basic grant is apportioned by the Board. Any Certification of Deposits, Form SAB 40-21 (New 04/02), received after 60 days will be brought to the Board on a case-by-case basis to determine if the funds will be released."

[48] Title 2, California Code of Regulations, Section 1866.4.7:

"A total deposit less than the maximum amount will require the district to comply with the reporting requirements of EC Section 17584.1. The OPSC will present to the

to comply with the reporting requirements at a public hearing when its total deposit is less than the maximum amount. The OPSC will present to the Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited.

Section 1866.5[49] (added in 1980 and last amended in 2003) requires a district applying for an extreme hardship grant to demonstrate to the Board that there is a critical project on the five year plan which meets both a defined financial test and a defined health and safety test. A district is required to demonstrate to the satisfaction of the Board that the health and safety of the pupils are at risk to obtain an extreme hardship grant to repair or replace an existing school building component.

Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited."

[49] Title 2, California Code of Regulations, Section 1866.5:

"A district may be eligible for an extreme hardship grant, provided the district demonstrates to the Board that there is a critical project on the Five Year Plan, Form SAB 40-20 (New 04/02), which meets all the following criteria:

(a) Financial Test

(1) The total estimated cost of the critical project is greater than two times the district's maximum basic grant.

(b) Health and Safety Test

(1) The project if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

An extreme hardship grant is available to repair or replace an existing school building component, authorized by EC Section 17582 or these regulations, located within existing district owned classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space located on a school site), if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk."

Section 1866.5.1[50] (added in 1980 and last amended in 2003), subdivision (a), requires a district submitting a complete extreme hardship grant application form to include all documents requested in the General Information Section of the Form as well as additional documentation identifying how the request meets the requirements of Education Code Section 17587. Subdivision (b) allows more than one Extreme Hardship Funding Application to be submitted in a fiscal year provided each project meets the eligibility requirements. Subdivision (c) requires a submitting district to submit a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the Extreme Hardship Funding Application. If the extreme hardship grant request contains work on relocatable facilities, a cost/benefit

[50] Title 2, California Code of Regulations, Section 1866.5.1:

"(a) For the OPSC to deem an application complete, a district requesting an extreme hardship grant shall submit to the OPSC an Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02), along with all documents requested in the General Information Section of the Form. Additional documentation identifying how the request meets the requirements of EC Section 17587 may be required.

(b) More than one Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02), may be submitted by a district in a fiscal year provided each project meets the eligibility requirements set forth in Section 1866.5. The OPSC will present projects to the Board in the order of date received. Complete applications are accepted on a continuous basis; those received prior to the last working day in June are ensured consideration for funding by the Board in the next funding cycle.

(c) The district shall submit a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02). If the extreme hardship grant request contains work on relocatable facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility. The Board will approve reasonable and appropriate funds to mitigate the conditions, which makes the project qualify as a hardship under EC Section 17587, if the costs are consistent with the Saylor Current Construction Costs."

analysis must be prepared by the district and submitted to the OPSC.

Section 1866.5.2[51] (added in 1980 and last amended in 2003), subdivisions (a) and (b), provide the method used to determine the amount of the extreme hardship grant. The district shall be required to contribute the maximum basic grant and State's matching share at the time the Board apportions funding for the project. Subdivision (c)

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[51] Title 2, California Code of Regulations, Section 1866.5.2:

"(a) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum Basic Grant and State matching share that is less than $1,000,000, shall be determined by either of the following:

(1) For a total project cost that is less than $1,000,000, the extreme hardship grant will be determined by taking the total project cost less the district's maximum basic grant, less the State's matching share.

(2) For a total project cost that exceeds $1,000,000, the extreme hardship grant will be determined by taking $1,000,000 less the district's maximum basic grant, less the State's matching share. The total of that amount plus 50 percent of any project costs above $1,000,000 will be the State's hardship contribution. The district's contribution will be 50 percent of the remaining excess above $1,000,000 and the district's maximum basic grant.

(b) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum basic grant and State matching share that exceeds $1,000,000, shall be determined by the following:

(1) From the total project cost deduct the district's maximum Basic Grant and State matching share. The remaining amount will be divided in half between the district and the State.

The district shall be required to contribute the maximum basic grant and State's matching share at the time the Board apportions funding for the project.

(c) An extreme hardship grant for each additional hardship project beyond one in any given fiscal year shall be determined by dividing the total project cost in half. A cash contribution of 50 percent will be required from the district.

(d) A district with only one school may include other major repair or replacement work deemed essential for basic utilization and functioning of the school, without being subject to subsection (c).

If a district receives an unfunded approval pursuant to Section 1866.5.3, the extreme hardship grant will be an estimate based on the current maximum basic grant and state matching share and will be re-calculated using the maximum basic grant and state matching share at the time of funding by the Board."

provides the method for determining the amount of each additional hardship project beyond one in any given fiscal year. Subdivision (d) allows a district with only one school to include other major repair or replacement work deemed essential for basic utilization and functioning of the school.

Section 1866.5.3[52] (added in 1980 and last amended in 2003), subdivisions (a)

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[52] Title 2, California Code of Regulations, Section 1866.5.3:

"(a) When funds are not available, project requests that meet the criteria for funding are presented to the Board on a continuous basis throughout the fiscal year and are included on an unfunded list based on the date the complete critical hardship application was received by the OPSC.

(b) The Board shall utilize the following prioritized list to apportion extreme hardship grants for critical projects when funds become available:

Priority Description	Priority No.
A project that meets the requirements of (c) below.	1
All other eligible projects as defined in EC Section 17582(a) or these regulations.	2

(c) At the time the complete application is filed with the OPSC, a district requesting Priority One status shall submit a resolution passed by the district's governing board that includes the following:

(1) Describe in detail the health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.

(2) Identify the facility or facilities on the school site that will be affected by the closure and the dates of closure.

(3) Identify how the board plans on housing the pupils until the facility can be re-opened.

An assessment will be made by the OPSC and the Board to determine if the critical project meets the Priority One requirements.

(d) When funds become available, the requests included on the OPSC Extreme Hardship Unfunded List will receive funding in the following order, provided the project still meets Section 1866.5(a):

(1) Increases, if the original request has already received an

and (b), provide the criteria for adding projects to an unfunded list, in order of application date and priority, when funds are not available. Subdivision (c) requires a district requesting a Priority One status at the time the complete application is filed with the OPSC to submit a resolution passed by the district's governing board that includes:

(1) The health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board;

(2) The facilities on the school site that will be affected by the closure and the dates of closure; and

(3) How the board plans on housing the pupils until the facility can be re-opened.

Section 1866.5.4[53] (added in 1980 and last amended in 2003), subdivision (a),

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apportionment.

(2) Priority One Projects.

(3) All other eligible projects as defined in EC Section 17582(a) or these regulations.

Within each category, projects will be funded in the order the project was placed on the unfunded list. Projects that do not receive funding will remain on the unfunded list for a future funding cycle.

(e) The Board may make exceptions to the priorities on a case-by-case basis for the benefit of the pupils affected.

(f) The Board shall maintain a sufficient reserve for unexpected emergencies and on-going cost increases."

[53] Title 2, California Code of Regulations, Section 1866.5.4:

"(a) Reimbursement of eligible architect/engineering expenditures will be allowed up to five months prior to the date that the hardship project is accepted for processing by the OPSC.

(b) After written determination by the OPSC that the project is approvable,

allows reimbursement of eligible architect/engineering expenditures for up to five months prior to the date that the hardship project is accepted for processing by the OPSC. Subdivision (b) allows reimbursement of eligible construction expenditures after project approval by the OPSC. If a district incurs construction costs prior to that date, these construction expenditures for the project will not be reimbursed. Subdivision (c) allows districts to contact the OPSC to request an expedited determination of the eligibility of the hardship project.

Section 1866.5.5[54] (added in 1980 and last amended in 2003) requires the extreme hardship grant to be used only for the critical project approved by the Board

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reimbursement of eligible construction expenditures will be allowed. If a district incurs construction costs prior to that date, all construction expenditures for the project will not be reimbursed.

(c) In the case where a project meets the criteria of priority one hardship pursuant to Section 1866.5.3(c), districts can contact the OPSC to request an expedited determination of the eligibility of the hardship project. The OPSC will respond within five working days. If OPSC does not respond within five working days, the project will be deemed approvable for eligible construction expenditures."

[54] Title 2, California Code of Regulations, Section 1866.5.5:

"The extreme hardship grant shall be used for the critical project approved by the Board and only expenditures relating to the minimum work necessary to mitigate the problem shall be recognized as eligible project costs. Architect or engineer's fees up to 12 percent of the construction costs will be deemed eligible as well as reasonable testing, inspection, and plan checking fees. The grant may not be used for any of the following:

(a) Construction costs incurred prior to the OPSC determining that the project is approvable, except for costs associated with temporary measures necessary to immediately mitigate the problem.

(b) Expenditures required by local mandate that are not prescribed in State law.

(c) Asbestos abatement, sampling, testing necessary as a result of a SFP modernization project or a Federal Renovation Program project.

(d) Non-owned facilities."

and only expenditures relating to the minimum work necessary to mitigate the problem shall be recognized as eligible project costs.

Section 1866.5.6[55] (added in 1980 and last amended in 2003) requires a district to request an increase in funding for ongoing project costs when either one of the following conditions exist:

(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work; or

(b) Additional related work is encountered within the scope of the work approved by the Board for the extreme hardship grant.

The OPSC may request that the project be re-bid prior to processing the increase for funding.

Section 1866.5.7[56] (added in 1980 and last amended in 2003) requires the district

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[55]Title 2, California Code of Regulations, Section 1866.5.6:

"A district may request an increase in funding for ongoing project costs under either one of the following conditions:
(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. The OPSC may request that the project be re-bid prior to processing the increase for funding.
(b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.
Any Board approved increase to the extreme hardship grant will be subject to the requirements of Section 1866.5.2."

[56] Title 2, California Code of Regulations, Section 1866.5.7:

"The OPSC will release State funds that have been apportioned by the Board to the district after submittal by the district of the Fund Release Authorization, Form SAB 40-23 (New 04/02), which is incorporated by reference, and supporting documentation requested in the General Instruction Section of the form. A district must submit the Fund

to submit a Fund Release Authorization Form and any supporting documentation requested to obtain the release of State funds that have been apportioned by the Board within one year of the apportionment of the extreme hardship grant for the project.

Section 1866.5.8[57] (added in 1980 and last amended in 2003), subdivision (a), requires the district to complete the critical project within one year of the extreme

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Release Authorization, Form SAB 40-23 (New 04/02), within one year of the apportionment of the extreme hardship grant for the project. After reviewing the submittal, the OPSC may request to the Board, based on the supporting documentation, that the extreme hardship grant be adjusted to reflect the actual project costs.

Should the district only provide documentation to support the release of funding for a portion of the project, the OPSC shall prorate the fund release based on the supporting documentation."

[57] Title 2, California Code of Regulations, Section 1866.5.8:

"Within one year of the extreme hardship grant apportionment by the Board the district shall:

(a) Complete the critical project; and

(b) Submit the Fund Release Authorization, Form SAB 40-23 (New 04/02) and supporting documentation pursuant to Section 1866.5.7.

(c) If (b) above has not been met within six months of Board apportionment, the district is required to submit a progress report in the form of a narrative to the OPSC. The report shall contain a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, the entire extreme hardship grant shall be presented to the Board for rescission and, if applicable, the portion of the Basic Grant the district received due to the extreme hardship grant funding unless the district submits a request for time extension.

(d) The Board may approve a time extension for the project based on the following:

(1) A provision for a six-month time extension if the district has completed the plans and they have been submitted to the DSA for approval.

(2) A provision for a six-month time extension when the plans are DSA approved and the project is currently out to bid.

(3) A provision for up to a nine-month time extension when the district can demonstrate to the Board that circumstances exists beyond the district's control."

hardship grant apportionment. Subdivision (b) requires the district to submit the Fund Release Authorization and supporting documentation within that year. Subdivision (c) requires the district to submit a progress report to the OPSC if the Fund Release Authorization has not been submitted within six months of Board apportionment. Should the district not meet the one year deadline, the district is required to submit a request for time extension to avoid possible rescission which shows:

(1) The district has completed the plans and they have been submitted to the DSA for approval;

(2) The plans are DSA approved and the project is currently out to bid; or

(3) The district can demonstrate to the Board that circumstances exists beyond the district's control.

Section 1866.5.9[58] (added in 1980 and last amended in 2003) provides that monitoring costs required by a public agency relating to the removal of an underground toxic tank that cannot be funded by any other source, shall be exempted from a project's total cost for the purpose of determining the district contribution.

Section 1866.7[59] (added in 1980 and last amended in 2003) provides that the

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[58] Title 2, California Code of Regulations, Section 1866.5.9:

"Monitoring costs required by a public agency relating to the removal of an underground toxic tank that cannot be funded by any other source, shall be exempted from a project's total cost for the purpose of determining the district contribution as required in Section 1866.5.2(a)(2) or (b)(1)."

[59] Title 2, California Code of Regulations, Section 1866.7:

"EC Section 17582(c) provides that the governing board of each school district

governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, and that no funds deposited in the district deferred maintenance fund may be expended by the governing board for any purpose other than those specified in Education Code Section 17582(a)..

Section 1866.8[60] (added in 1980 and last amended in 2003) requires that any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in Education Code Sections 17582 and 17587 must comply with all laws, specifically the Public Contract Code and Code of Regulations (Title 24). Any "emergency" contract must be awarded pursuant to Public Contract Code Section 20113.

Section 1866.9[61] (added in 1980 and last amended in 2003) requires a district

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shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to EC Section 17584(a) or (b) may be expended by the governing board for any purpose except those specified in EC Section 17582(a)."

[60] Title 2, California Code of Regulations, Section 1866.8:

"Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in EC Sections 17582 and 17587 must comply with all laws, specifically the Public Contract Code (PCC) and the California Code of Regulations (Title 24). An "emergency" contract must be awarded under the provisions of the PCC Section 20113."

[61] Title 2, California Code of Regulations, Section 1866.9:

"A district receiving funds in accordance with Section 1866.5.2 shall submit an expenditure report from the district on the Expenditure Report, Form SAB 40-24 (New

receiving funds to submit an expenditure report on the Expenditure Report Form within 2 years from the date any funds were released.

Section 1866.9.1[62] (added in 1980 and last amended in 2003) requires the project to be audited when a district has received extreme hardship funds. The district is required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Section 1866.10[63] (added in 1980 and last amended in 2003) provides that, in

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04/02), which is incorporated by reference. The expenditure report shall be due no later than two years from the date any funds were released."

[62] Title 2, California Code of Regulations, Section 1866.9.1:

"When the district has received funds pursuant to Section 1866.5.2, the project will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of EC Section 17582(a), 17587, and Section 1866.5.5.

When the OPSC receives the final expenditure report from the district on the Expenditure Report, Form SAB 40-24 (New 04/02), an audit of the expenditures by the OPSC shall commence within one year of the report for all extreme hardship grant apportionments made by the Board after these regulations become effective. The OPSC shall complete the audit within six months, unless additional information requested by the district has not been received.

The district shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities."

[63] Title 2, California Code of Regulations, Section 1866.10:

making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

Section 1866.12[64] (added in 2003) provides for the treatment of earned interest on State funds.

Section 1866.13[65] (added in 2003) requires the district to certify, if the district's

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"In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law."

[64] Title 2, California Code of Regulations, Section 1866.12:

"Earned interest on State funds received in accordance with the Act shall be treated as follows:
(a) One half of any interest earned on DMP grant funds provided pursuant to Section 1866.4.2 may be applied towards the district match in any given fiscal year.
(b) All interest earned on DMP grant funds provided pursuant to Section 1866.5 shall be applied to eligible project costs for the project pursuant to Section 1866.5.5 or returned to the State."

[65] Title 2, California Code of Regulations, Section 1866.13:

"If the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization project must be withdrawn prior to the release of any extreme hardship grants to the district.
If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's Five Year Plan, Form SAB 40-20, (New 04/02) pursuant to Education Code Section 17591, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district."

application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization project must be withdrawn prior to the release of any extreme hardship grants to the district. If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's Five Year Plan, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district.

Section 1866.14[66] (added in 2003) prohibits the district from amending an Extreme Hardship Funding Application that has not received Board approval to increase the scope of work. At the option of the district, the funding application may be withdrawn

[66] Title 2, California Code of Regulations, Section 1866.14:

"The district may not amend an Extreme Hardship Funding Application, Form SAB 40-22, (New 04/02) submitted to the OPSC that has not received Board approval to increase the scope of work. At the option of the district, the funding application may be withdrawn and resubmitted to include the additional work. The district must request that the application be withdrawn and removed from the OPSC Deferred Maintenance Extreme Hardship Workload List. The resubmitted application will receive a new processing date by the OPSC."

and resubmitted to include the additional work. The district must request that the application be withdrawn and removed from the OPSC Deferred Maintenance Extreme Hardship Workload List. The resubmitted application will receive a new processing date by the OPSC.

Section 1867.2[67] (added in 1986), subdivision (a), provides that the State Allocation Board will partially fund each eligible district's asbestos abatement projects. The State Allocation Board may increase the apportionment to a district, upon request. In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund a specified amount for a period of 5 years. Subdivision (b) requires a district certification of project completion be submitted to OAL

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[67] Title 2, California Code of Regulations, Section 1867.2:

"(a) The State Allocation Board will fund 50% of each eligible district's abatement projects. The state Allocation Board may increase the apportionment to a district, upon request, if the required district contribution shown below in excess of 1/2 of 1% of the district's budgeted General Fund and Adult Education Fund, less capital outlay and debt service.

Required A.D.A.	District Contribution
4,499 or less	25% of project cost
4,500 or more	50% of project cost

In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund the lesser of the 1/2 of 1% figure each year for a period of five years or the full percentage of the required district contribution. Installment payments will cease at the time the required district contribution is attained or at the end of five years, whichever occurs first.

(b) Funds may be apportioned on estimated project cost, however, any savings realized after the project is completed will revert to the State Asbestos Abatement Fund. A district certification of project completion must be submitted to OAL within 30 days of completion. "

within 30 days of completion.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Deferred Maintenance Program Handbook of January 2003[68] is an "Executive Order" as defined in the Government Code Section 17516[69] and together with the statutes, Education Code sections and regulations referenced in this test claim result in school districts incurring costs mandated by the state, as defined in Government Code section 17514[70], by creating new state-mandated duties related to

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[68] A copy of the Deferred Maintenance Program Handbook of January 2003 is attached hereto as Exhibit 5 and, along with its predecessor and successor releases are incorporated herein by reference.

[69] Government Code Section 17516, added by Chapter 1459, Statutes of 1984, Section 1:

"'Executive Order' means 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.

'Executive Order' does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

[70] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on

the uniquely governmental function of providing public services and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[71]

The new duties mandated by the state upon school districts and county offices of education require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

Education Code Sections

A) Pursuant to Education Code Sections 17582 through 17591 (not consecutive), Sections 49410 through 49410.7 (not consecutive), and Title 2 California Code of Regulations Sections 1866 through 1867.2 (not consecutive), to establish and implement policies and procedures, and to periodically update those policies and procedures, to comply with all requirements concerning deferred maintenance, removal of asbestos, and the removal of lead at schoolsites.

B) Pursuant to Education Code Section 17582, establishing a restricted fund to be

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or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

[71] 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."

known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, and any other items of maintenance approved by the State Allocation Board.

C) Pursuant to Education Code Section 17583, transferring excess local funds to any other expenditure classifications in other funds of the district whenever state funds provided pursuant to Sections 17584 and 17585 are insufficient to fully match the local funds deposited in the deferred maintenance fund. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor.

D) Pursuant to Education Code Section 17584, providing matching funds to those apportioned from the State School Deferred Maintenance Fund by the State Allocation Board to the district.

E) Pursuant to Education Code Section 17584.1, subdivision (a), discussing proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

F) Pursuant to Education Code Section 17584.1, subdivisions (b) and (c), submitting a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board in any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance. The report shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of the school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

G) Pursuant to Education Code Section 17584.1(d) making copies of the report available at each schoolsite within the district and providing copies to the public on request.

H) Pursuant to Education Code Section 17584.2, at the public hearing required

pursuant to Section 17584.1, also addressing the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials.

I) Pursuant to Education Code Section 17585, when requesting an additional apportionment for deferred maintenance funding, submitting applications to the State Allocation Board which certifies:

(1) That, if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid;

(2) The additional claim is not greater than one-half of 1 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds; and

(3) That any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

J) Pursuant to Education Code Section 17586, subdivision (a), to be eligible to

receive an apportionment pursuant to subdivision (b) of Section 17584, showing that there are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board and

(1) The district had a fiscal emergency and

(2) The fiscal emergency was caused primarily by required expenditures, and

(3) The district has taken reasonable steps to address the fiscal emergency.

K) Pursuant to Education Code Section 17587, when necessary, applying for additional apportionments to complete a critical project on the grounds of extreme hardship, by showing:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant

to Section 17584 are insufficient to complete the project.

L) Pursuant to Education Code Section 17588, complying with regulations developed and adopted by the State Allocation Board after receiving an additional apportionment to complete a critical project on the grounds of extreme hardship.

M) Pursuant to Education Code Section 17589, complying with policies pertaining to school districts developed by the State Allocation Board for the apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410, including the providing of funds on a matching basis

N) Pursuant to Education Code Section 17591, filing with the State Allocation Board, and receiving approval of, a five-year plan of the maintenance needs of the district over that five-year period when desiring an apportionment pursuant to Section 17584, and making amendments thereto from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

O) Pursuant to Education Code Section 49410.2, applying to the State Allocation Board pursuant to Section 39619.6 for funds for the purposes of containment or removal of asbestos materials posing a hazard to health.

P) Pursuant to Education Code Section 49410.5, subdivision (b)(2), complying with guidelines suggested by the Environmental Protection Agency for the purposes of inspection and testing for asbestos materials, and for the protection and safety of workers and all other individuals during the encapsulation and removal of

asbestos.

Q) Pursuant to Education Code Section 49410.7, for purposes of funding pursuant to Section 39619.9 (now, Education Code Section 17590), demonstrating that visual inspection and bulk samples and air monitoring show an airborne concentration of asbestos in the school building in excess of the standard 0.01 fibers/cc by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher.

California Code of Regulations

A) Pursuant to Title 2, California Code of Regulations, Section 1866.1, when applying for a grant, as provided by the Act and the regulations, showing that the district operates as one of the following:

(1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or

(2) A County Superintendent of Schools that serves any combination of kindergarten through twelfth grade pupils; or

(3) A regional occupational center identified in Education Code Section 17592.5; and

that the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Education Code Section 17582(a) and these regulations; that the district has a Board approved Five Year Plan, complying with

Section 1866.4, which includes the fiscal year of funding.

B) Pursuant to Title 2, California Code of Regulations, Section 1866.2, completing and filing a Five Year Plan when seeking funding for a DMP Basic Grant.

C) Pursuant to Title 2, California Code of Regulations, Section 1866.3, completing and filing an Extreme Hardship Funding Application when seeking funding for a DMP extreme hardship grant.

D) Pursuant to Title 2, California Code of Regulations, Section 1866.4, filing with the Board a five year plan for the deferred maintenance needs of the district, consisting of a summary of proposed projects the district plans on completing annually over the next five fiscal years.

E) Pursuant to Title 2, California Code of Regulations, Section 1866.4, subdivisions (a) and (b), submitting a revised five year plan when:

(1) The plan has expired.

(2) Work will be performed that is not listed on the plan or at a school not listed on the plan.

(3) Work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.

A district submitting a new plan, or revising a plan, must be able to certify that the plans and proposals for expenditures of funds, listed on the Five Year Plan submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to Education Code Section 17584.1(a).

F) Pursuant to Title 2, California Code of Regulations, Section 1866.4.1, provided it meets specified criteria, including a repair or replacement project on its Five Year Plan.

G) Pursuant to Title 2, California Code of Regulations, Section 1866.4 and 1866.4.3, depositing a matching share into its District Deferred Maintenance Fund established pursuant to Education Code Section 17582(a).

H) Pursuant to Title 2, California Code of Regulations, Section 1866.4.4, carrying over any funds deposited and not matched by the State to the next fiscal year. Carrying over unexpended, unmatched balances past the next fiscal year under the provisions of Education Code Section 17583, and then reaffirming by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes.

I) Pursuant to Title 2, California Code of Regulations, Section 1866.4.7, if making a deposit less than the maximum amount, complying with the reporting requirements of Education Code Section 17584.1.

J) Pursuant to Title 2, California Code of Regulations, Section 1866.5, when applying for an extreme hardship grant, demonstrating to the Board that there is a critical project on the Five Year Plan which meets all the stated criteria for (a) a financial test and (b) a health and safety test.

K) Pursuant to Title 2, California Code of Regulations, Section 1866.5.1, when requesting an extreme hardship grant, submitting to the OPSC an Extreme Hardship Funding Application, along with all documents requested in the General

Information Section of the Form. Submitting additional documentation identifying how the request meets the requirements of EDUCATION CODE Section 17587 when required. Pursuant to Subdivision (c), submitting a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the application. If the extreme hardship grant request contains work on relocatable facilities, preparing and submitting a cost/benefit analysis to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility.

L) Pursuant to Title 2, California Code of Regulations, Section 1866.5.3, subdivision (c), submitting a resolution passed by the governing board at the time the complete application for an extreme hardship grant is filed with the OPSC requesting Priority One status that includes the following:

(1) A description, in detail, of the health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.

(2) An identification of the facility or facilities on the school site that will be affected by the closure and the dates of closure.

(3) An Identification of how the board plans on housing the pupils until the facility can be re-opened.

M) Pursuant to Title 2, California Code of Regulations, Section 1866.5.4, seeking reimbursement of eligible architect/engineering expenditures up to five months prior to the date that the hardship project is accepted for processing by the

OPSC.

N) Pursuant to Title 2, California Code of Regulations, Section 1866.5.6, requesting an increase in funding for ongoing project costs under either one of the following conditions:

(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. When the OPSC requests, re-bidding the project prior to processing the increase for funding.

(b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.

O) Pursuant to Title 2, California Code of Regulations, Sections 1866.5.7 and 1866.5.8, submitting a Fund Release Authorization and supporting documentation requested in the General Instruction Section of the form within one year of the apportionment of the extreme hardship grant for the project.

P) Pursuant to Title 2, California Code of Regulations, Section 1866.5.8, if submission of the Fund Release Authorization has not been met within six months of Board apportionment, submitting a progress report in the form of a narrative to the OPSC which contains a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, submitting a request for time extension.

Q) Pursuant to Title 2, California Code of Regulations, Section 1866.8, complying

with all laws, specifically the Public Contract Code and the California Code of Regulations (Title 24) when making any expenditures from the proceeds of an apportionment made for the purposes set forth in Education Code Sections 17582 and 17587 and making "emergency" contracts under the provisions of Public Contract Code Section 20113.

R) Pursuant to Title 2, California Code of Regulations, Section 1866.9, submitting an expenditure report no later than two years from the date any funds were released after receiving funds in accordance with Section 1866.5.2.

S) Pursuant to Title 2, California Code of Regulations, Section 1866.9.1, cooperating with audits made to assure that expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17582(a), 17587, and Section 1866.5.5. Maintaining all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

T) Pursuant to Title 2, California Code of Regulations, Section 1866.13, if the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, certifying that, after reducing the work to be funded with the extreme hardship grant from

the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's Five Year Plan, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district.

U) Pursuant to Title 2, California Code of Regulations, Section 1866.14, receiving Board approval to increase the scope of work prior to amending an Extreme Hardship Funding Application. Alternatively, withdrawing and resubmitting the funding application to include the additional work.

V) Pursuant to Title 2, California Code of Regulations, Section 1867.2, subdivision (a), agreeing to contribute into the State Asbestos Abatement Fund the lesser of the ½ of 1% figure each year for a period of five years or the full percentage of the required district contribution, in order to receive an increased apportionment.

W) Pursuant to Title 2, California Code of Regulations, Section 1867.2, subdivision (b), submitting a district certification of project completion to OAL within 30 days of completion certifying any savings realized after the project is completed.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[72] statutory exceptions to a finding

[72] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[73]

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

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

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[73] 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."

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

To the extent that state and/or federal funds are provided and continue to be provided, the receipt of those funds will reduce the amounts claimed. Otherwise, no funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

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

Exhibit 1: Declaration of William McGuire
Associate Superintendent of Administrative Services
Clovis Unified School District

Exhibit 2: Copies of Statutes Cited

Chapter 1084, Statutes of 2002
Chapter 1075, Statutes of 2002
Chapter 390, Statutes of 1999
Chapter 277, Statutes of 1996
Chapter 1263, Statutes of 1990
Chapter 711, Statutes of 1989
Chapter 83, Statutes of 1989
Chapter 1254, Statutes of 1987
Chapter 917, Statutes of 1987
Chapter 1451, Statutes of 1986
Chapter 1258, Statutes of 1986
Chapter 886, Statutes of 1986
Chapter 1587, Statutes of 1985
Chapter 759, Statutes of 1985
Chapter 1751, Statutes of 1984
Chapter 1234, Statutes of 1984
Chapter 800, Statutes of 1983
Chapter 753, Statutes of 1983
Chapter 525, Statutes of 1982
Chapter 1093, Statutes of 1981
Chapter 649, Statutes of 1981
Chapter 371, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 40, Statutes of 1980
Chapter 282, Statutes of 1979

Exhibit 3: Copies of Code Sections Cited

Education Code Section 17582
Education Code Section 17583
Education Code Section 17584
Education Code Section 17584.1

Education Code Section 17584.2
Education Code Section 17585
Education Code Section 17586
Education Code Section 17587
Education Code Section 17588
Education Code Section 17589
Education Code Section 17590
Education Code Section 17591
Education Code Section 17592
Education Code Section 49410
Education Code Section 49410.2
Education Code Section 49410.5
Education Code Section 49410.7

Exhibit 4: Title 2, California Code of Regulations

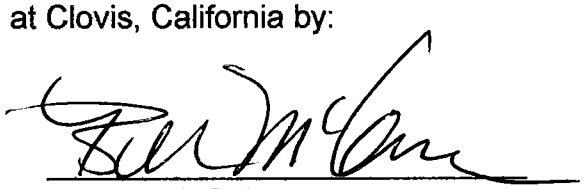
Section 1866
Section 1866.1
Section 1866.2
Section 1866.3
Section 1866.4
Section 1866.4.1
Section 1866.4.2
Section 1866.4.3
Section 1866.4.4
Section 1866.4.6
Section 1866.4.7
Section 1866.5
Section 1866.5.1
Section 1866.5.2
Section 1866.5.3
Section 1866.5.4
Section 1866.5.5
Section 1866.5.6
Section 1866.5.7
Section 1866.5.8
Section 1866.5.9
Section 1866.7
Section 1866.8
Section 1866.9
Section 1866.9.1
Section 1866.10
Section 1866.12
Section 1866.13
Section 1866.14
Section 1867.2

Exhibit 5: Deferred Maintenance Handbook of January 2003

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Clovis, California by:



William McGuire
Associate Superintendent

Voice: 559-327-3110
Fax: 559-327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

William McGuire
Associate Superintendent

6/23/2003
Date

EXHIBIT 1
DECLARATION OF WILLIAM McGUIRE

DECLARATION OF WILLIAM McGUIRE

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Chapter 1084, Statutes of 2002
Chapter 1075, Statutes of 2002
Chapter 390, Statutes of 1999
Chapter 277, Statutes of 1996
Chapter 1263, Statutes of 1990
Chapter 711, Statutes of 1989
Chapter 83, Statutes of 1989
Chapter 1254, Statutes of 1987
Chapter 917, Statutes of 1987
Chapter 1451, Statutes of 1986
Chapter 1258, Statutes of 1986
Chapter 886, Statutes of 1986
Chapter 1587, Statutes of 1985
Chapter 759, Statutes of 1985
Chapter 1751, Statutes of 1984
Chapter 1234, Statutes of 1984
Chapter 800, Statutes of 1983
Chapter 753, Statutes of 1983
Chapter 525, Statutes of 1982
Chapter 1093, Statutes of 1981
Chapter 649, Statutes of 1981
Chapter 371, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 40, Statutes of 1980
Chapter 282, Statutes of 1979

Education Code Section 17582
Education Code Section 17583
Education Code Section 17584
Education Code Section 17584.1
Education Code Section 17584.2
Education Code Section 17585
Education Code Section 17586
Education Code Section 17587
Education Code Section 17588
Education Code Section 17589
Education Code Section 17590
Education Code Section 17591
Education Code Section 17592
Education Code Section 17592
Education Code Section 49410
Education Code Section 49410.2
Education Code Section 49410.5
Education Code Section 49410.7

Section 1866
Section 1866.1
Section 1866.2
Section 1866.3
Section 1866.4
Section 1866.4.1
Section 1866.4.2
Section 1866.4.3
Section 1866.4.4
Section 1866.4.6
Section 1866.4.7
Section 1866.5
Section 1866.5.1
Section 1866.5.4
Section 1866.5.5
Section 1866.5.6
Section 1866.5.7
Section 1866.5.8
Section 1866.5.9
Section 1866.7
Section 1866.8
Section 1866.9
Section 1866.9.1
Section 1866.10
Section 1866.12
Section 1866.13

Section 1866.5.2 Section 1866.14
Section 1866.5.3 Section 1867.2

Deferred Maintenance Program Handbook of January 2003

Deferred Maintenance Programs

I, William McGuire, Associate Superintendent of Administrative Services, Clovis Unified School District, make the following declaration and statement.

In my capacity as Associates Superintendent of Administrative Services, I am responsible for the administration of the district's Deferred Maintenance Programs. I am familiar with the provisions and requirements of the Statutes, Education Code Sections, Title 2 Regulations and the state Deferred Maintenance Program Handbook enumerated above.

These statutes, code sections, regulations and handbook require the Clovis Unified School District to:

Education Code Sections

A) Pursuant to Education Code Sections 17582 through 17591 (not consecutive), Sections 49410 through 49410.7 (not consecutive), and Title 2 California Code of Regulations Sections 1866 through 1867.2 (not consecutive), to establish and implement policies and procedures, and to periodically update those policies and procedures, to comply with all requirements concerning deferred maintenance, removal of asbestos, and the removal of lead at schoolsites.

B) Pursuant to Education Code Section 17582, establishing a restricted fund to be

known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, and any other items of maintenance approved by the State Allocation Board.

C) Pursuant to Education Code Section 17583, transferring excess local funds to any other expenditure classifications in other funds of the district whenever state funds provided pursuant to Sections 17584 and 17585 are insufficient to fully match the local funds deposited in the deferred maintenance fund. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor.

D) Pursuant to Education Code Section 17584, providing matching funds to those apportioned from the State School Deferred Maintenance Fund by the State Allocation Board to the district.

E) Pursuant to Education Code Section 17584.1, subdivision (a), discussing proposals and plans for expenditure of funds for the deferred maintenance of

school district facilities at a regularly scheduled public hearing.

F) Pursuant to Education Code Section 17584.1, subdivisions (b) and (c), submitting a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board in any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance. The report shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of the school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

G) Pursuant to Education Code Section 17584.1(d) making copies of the report available at each schoolsite within the district and providing copies to the public

on request.

H) Pursuant to Education Code Section 17584.2, at the public hearing required pursuant to Section 17584.1, also addressing the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials.

I) Pursuant to Education Code Section 17585, when requesting an additional apportionment for deferred maintenance funding, submitting applications to the State Allocation Board which certifies:

(1) That, if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid;

(2) The additional claim is not greater than one-half of 1 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds; and

(3) That any additional funds will be used to meet deferred

maintenance identified in the district's five-year deferred maintenance plan.

J) Pursuant to Education Code Section 17586, subdivision (a), to be eligible to receive an apportionment pursuant to subdivision (b) of Section 17584, showing that there are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board and

(1) The district had a fiscal emergency and

(2) The fiscal emergency was caused primarily by required expenditures, and

(3) The district has taken reasonable steps to address the fiscal emergency.

K) Pursuant to Education Code Section 17587, when necessary, applying for additional apportionments to complete a critical project on the grounds of extreme hardship, by showing:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if

not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 17584 are insufficient to complete the project.

L) Pursuant to Education Code Section 17588, complying with regulations developed and adopted by the State Allocation Board after receiving an additional apportionment to complete a critical project on the grounds of extreme hardship.

M) Pursuant to Education Code Section 17589, complying with policies pertaining to school districts developed by the State Allocation Board for the apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410, including the providing of funds on a matching basis

N) Pursuant to Education Code Section 17591, filing with the State Allocation Board, and receiving approval of, a five-year plan of the maintenance needs of the district over that five-year period when desiring an apportionment pursuant to Section 17584, and making amendments thereto from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

O) Pursuant to Education Code Section 49410.2, applying to the State Allocation Board pursuant to Section 39619.6 for funds for the purposes of containment or

removal of asbestos materials posing a hazard to health.

P) Pursuant to Education Code Section 49410.5, subdivision (b)(2), complying with guidelines suggested by the Environmental Protection Agency for the purposes of inspection and testing for asbestos materials, and for the protection and safety of workers and all other individuals during the encapsulation and removal of asbestos.

Q) Pursuant to Education Code Section 49410.7, for purposes of funding pursuant to Section 39619.9 (now, Education Code Section 17590), demonstrating that visual inspection and bulk samples and air monitoring show an airborne concentration of asbestos in the school building in excess of the standard 0.01 fibers/cc by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher.

California Code of Regulations

A) Pursuant to Title 2, California Code of Regulations, Section 1866.1, when applying for a grant, as provided by the Act and the regulations, showing that the district operates as one of the following:

(1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or

(2) A County Superintendent of Schools that serves any combination of kindergarten through twelfth grade pupils; or

(3) A regional occupational center identified in Education Code Section 17592.5; and

that the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Education Code Section 17582(a) and these regulations; that the district has a Board approved Five Year Plan, complying with Section 1866.4, which includes the fiscal year of funding.

B) Pursuant to Title 2, California Code of Regulations, Section 1866.2, completing and filing a Five Year Plan when seeking funding for a DMP Basic Grant.

C) Pursuant to Title 2, California Code of Regulations, Section 1866.3, completing and filing an Extreme Hardship Funding Application when seeking funding for a DMP extreme hardship grant.

D) Pursuant to Title 2, California Code of Regulations, Section 1866.4, filing with the Board a five year plan for the deferred maintenance needs of the district, consisting of a summary of proposed projects the district plans on completing annually over the next five fiscal years.

E) Pursuant to Title 2, California Code of Regulations, Section 1866.4, subdivisions (a) and (b), submitting a revised five year plan when:

(1) The plan has expired.

(2) Work will be performed that is not listed on the plan or at a school not listed on the plan.

(3) Work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.

A district submitting a new plan, or revising a plan, must be able to certify that the plans and proposals for expenditures of funds, listed on the Five Year Plan submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to Education Code Section 17584.1(a).

F) Pursuant to Title 2, California Code of Regulations, Section 1866.4.1, provided it meets specified criteria, including a repair or replacement project on its Five Year Plan.

G) Pursuant to Title 2, California Code of Regulations, Section 1866.4 and 1866.4.3, depositing a matching share into its District Deferred Maintenance Fund established pursuant to Education Code Section 17582(a).

H) Pursuant to Title 2, California Code of Regulations, Section 1866.4.4, carrying over any funds deposited and not matched by the State to the next fiscal year. Carrying over unexpended, unmatched balances past the next fiscal year under the provisions of Education Code Section 17583, and then reaffirming by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes.

I) Pursuant to Title 2, California Code of Regulations, Section 1866.4.7, if making a deposit less than the maximum amount, complying with the reporting

requirements of Education Code Section 17584.1.

J) Pursuant to Title 2, California Code of Regulations, Section 1866.5, when applying for an extreme hardship grant, demonstrating to the Board that there is a critical project on the Five Year Plan which meets all the stated criteria for (a) a financial test and (b) a health and safety test.

K) Pursuant to Title 2, California Code of Regulations, Section 1866.5.1, when requesting an extreme hardship grant, submitting to the OPSC an Extreme Hardship Funding Application, along with all documents requested in the General Information Section of the Form. Submitting additional documentation identifying how the request meets the requirements of EDUCATION CODE Section 17587 when required. Pursuant to Subdivision (c), submitting a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the application. If the extreme hardship grant request contains work on relocatable facilities, preparing and submitting a cost/benefit analysis to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility.

L) Pursuant to Title 2, California Code of Regulations, Section 1866.5.3, subdivision (c), submitting a resolution passed by the governing board at the time the complete application for an extreme hardship grant is filed with the OPSC requesting Priority One status that includes the following:

(1) A description, in detail, of the health and safety or structural problems

present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.

(2) An identification of the facility or facilities on the school site that will be affected by the closure and the dates of closure.

(3) An Identification of how the board plans on housing the pupils until the facility can be re-opened.

M) Pursuant to Title 2, California Code of Regulations, Section 1866.5.4, seeking reimbursement of eligible architect/engineering expenditures up to five months prior to the date that the hardship project is accepted for processing by the OPSC.

N) Pursuant to Title 2, California Code of Regulations, Section 1866.5.6, requesting an increase in funding for ongoing project costs under either one of the following conditions:

(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. When the OPSC requests, re-bidding the project prior to processing the increase for funding.

(b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.

O) Pursuant to Title 2, California Code of Regulations, Sections 1866.5.7 and 1866.5.8, submitting a Fund Release Authorization and supporting documentation

requested in the General Instruction Section of the form within one year of the apportionment of the extreme hardship grant for the project.

P) Pursuant to Title 2, California Code of Regulations, Section 1866.5.8, if submission of the Fund Release Authorization has not been met within six months of Board apportionment, submitting a progress report in the form of a narrative to the OPSC which contains a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, submitting a request for time extension.

Q) Pursuant to Title 2, California Code of Regulations, Section 1866.8, complying with all laws, specifically the Public Contract Code and the California Code of Regulations (Title 24) when making any expenditures from the proceeds of an apportionment made for the purposes set forth in Education Code Sections 17582 and 17587 and making "emergency" contracts under the provisions of Public Contract Code Section 20113.

R) Pursuant to Title 2, California Code of Regulations, Section 1866.9, submitting an expenditure report no later than two years from the date any funds were released after receiving funds in accordance with Section 1866.5.2.

S) Pursuant to Title 2, California Code of Regulations, Section 1866.9.1, cooperating with audits made to assure that expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17582(a), 17587,

and Section 1866.5.5. Maintaining all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

T) Pursuant to Title 2, California Code of Regulations, Section 1866.13, if the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, certifying that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's Five Year Plan, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district.

U) Pursuant to Title 2, California Code of Regulations, Section 1866.14, receiving Board approval to increase the scope of work prior to amending an Extreme Hardship Funding Application. Alternatively, withdrawing and resubmitting the

funding application to include the additional work.

V) Pursuant to Title 2, California Code of Regulations, Section 1867.2, subdivision (a), agreeing to contribute into the State Asbestos Abatement Fund the lesser of the ½ of 1% figure each year for a period of five years or the full percentage of the required district contribution, in order to receive an increased apportionment.

W) Pursuant to Title 2, California Code of Regulations, Section 1867.2, subdivision (b), submitting a district certification of project completion to OAL within 30 days of completion certifying any savings realized after the project is completed.

It is estimated that Clovis Unified School District incurred more than $1,000 in staffing and other costs in excess of any funding provided to school districts for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 23 day of June 2003, at Clovis, California

William McGuire
Associate Superintendent of Administrative Services
Clovis Unified School District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 282

An act to amend Section 19632 of the Business and Professions Code, to amend Sections 16250, 39246, 39247, 39363, 41300, 41301, 41403, 41604, 42103.5, 52171, 60200, 60265, 84370, 84897, 84904, and 85003.5 of, to add Sections 16096.5, 39618, 39619, 39620, 39621, 41601.5,

18 05

the district has no major deferred maintenance requirements.

SEC. 17. Section 39453 of the Education Code is repealed.

SEC. 18. Section 39618 is added to the Education Code, to read:

39618. (a) The governing board of each school district may establish an account to be known as the "district deferred maintenance account" in the general fund of the district for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems and the exterior and interior painting of school buildings or such other items of maintenance as may be approved by the State Allocation Board. Funds deposited in the district deferred maintenance account may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance account for purposes of this section.

(b) Funds deposited in the district deferred maintenance account shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance account, provided that no funds deposited in the district deferred maintenance account pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 19. Section 39619 is added to the Education Code, to read:

39619. (a) Whenever a school district has deposited in its deferred maintenance account established pursuant to Section 39618 an amount equal to or greater than that prescribed by this section, and such district's total expenditures and accounts payable for maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, are at least as great as in the previous fiscal year, adjusted in conformance with the percentage change in the Consumer Price Index—All Items, of the Bureau of Labor Statistics of the United States Department of Labor, for that fiscal year, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) in accordance with the greatest need as reflected in the maintenance plans required by Section 39620.

SEC. 20. Section 39620 is added to the Education Code, to read:

39620. Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five year plan of the maintenance needs of the district

over such period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance account shall conform to the plan approved by the State Allocation Board.

SEC. 21. Section 39621 is added to the Education Code, to read:

39621. From any moneys in the State School Deferred Maintenance Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

SEC. 22. Section 41300 of the Education Code is amended to read:

41300. Commencing with July 1, 1980, the amount transferred to Section A of the State School Fund pursuant to subdivision (a) of Section 14002 shall be expended for basic aid, equalization aid, allowances for adults, and allowances to the county school tuition funds to be apportioned on account of average daily attendance.

SEC. 23. Section 41301 of the Education Code is amended to read:

41301. The amount transferred to Section A of the State School Fund pursuant to Section 14002 and Section 14004 shall be expended in accordance with the following schedule:

(a) Twenty-one dollars and fifty cents ($21.50) multiplied by the total average daily attendance credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of average daily attendance, to high school districts which during the preceding school year had less than 301 units of average daily attendance, and to unified districts which during the preceding school year had less than 1,501 units of average daily attendance, but not to exceed an amount equal to eighty-five cents ($0.85) multiplied by the average daily attendance credited during the preceding fiscal year to all elementary, high, and unified school districts and to all county superintendents of schools in the state, for allowance to county school service funds pursuant to subdivision (a) of Section 14054.

Commencing with the 1980–81 fiscal year, the amounts in this subdivision shall be increased annually by the same percentage prescribed by Section 14002.5.

(b) Fourteen dollars and thirty-five cents ($14.35) multiplied by the total average daily attendance credited to all elementary, high, and unified school districts and to all county superintendents of schools in the state, during the preceding school year for the purposes of Article 10 (commencing with Section 41850) of Chapter 5 of this part.

(c) Thirty-eight dollars and thirty cents ($38.30) multiplied by the total average daily attendance credited to all elementary, high, and unified school districts and to all county superintendents of schools in the state, during the preceding school year, for the purposes of Article 3 (commencing with Section 56030) of Chapter 1, Chapter 3 (commencing with Section 56500), Chapter 5 (commencing with Section 56700) of Part 30 of Division 4 of this title, and Sections 41863, 41866, 41892, and 41897.

CHAPTER 40

An act to amend Sections 17730.6, 39618, 39619, and 39620 of, to add Section 39619.5 to, and to add and repeal Section 41977 of, the Education Code, relating to school finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 14, 1980. Filed with Secretary of State March 14, 1980.]

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

SECTION 1. Section 17730.6 of the Education Code is amended to read:

17730.6. From any moneys in the State School Building Lease-Purchase Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to

provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

SEC. 2. Section 39618 of the Education Code is amended to read:

39618. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems and the exterior and interior painting of school buildings or such other items of maintenance as may be approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 3. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever a school district has deposited in its deferred maintenance fund established pursuant to Section 39618 an amount equal to or greater than that prescribed by this section, and such district's total expenditures and accounts payable for maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, are at least as great as in the previous fiscal year, adjusted in conformance with the percentage change in the Consumer Price Index—All Items, of the Bureau of Labor Statistics of the United States Department of Labor, for that fiscal year, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780).

SEC. 4. Section 39619.5 is added to the Education Code, to read:

39619.5. Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in addition to the apportionments made pursuant to

Section 39619, in instances of extreme hardship. An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious weather damage to the remainder of the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

As a result of the determination made in the preceding paragraph, the State Allocation Board may increase the apportionment to a school district by such amount as it determines necessary to complete the critical project, provided the district agrees that state apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment.

SEC. 5. Section 39620 of the Education Code is amended to read:

39620. Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five year plan of the maintenance needs of the district over such period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

SEC. 6. Section 41977 is added to the Education Code, to read:

41977. (a) If during the 1980–81 fiscal year a school district, which provided programs pursuant to subdivision (b) or (c) of Section 42901 for pupils specified in subdivision (a) of Section 42901, fails to expend an amount in the 1980–81 fiscal year at least equal to the amount it expended for such programs in the 1979–80 fiscal year, the Superintendent of Public Instruction shall reduce such district's entitlement from Section A of the State School Fund in the 1980–81 fiscal year by an amount equal to four times the amount which such district expended for such programs in the 1979–80 fiscal year.

(b) This section shall remain in effect only until June 30, 1981, and as of such date is repealed, unless a later enacted statute deletes or extends such date.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order for the provisions of this act to apply to the 1979–80 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1354

An act to amend Sections 2553, 16301, 17762, 33403, 33502, 33508, 33509, 33510, 33511, 33513, 33514, 33522, 37062, 39146, 39384, 39510, 39619, 41301, 41601, 41604, 41841.5, 41972, 41976, 42123, 42237, 42237.6, 42238, 42240, 42243.5, 42243.7, 46613, 46616, 49531, 49553, 52302.9, 52321, 52324, 52324.5, 81136, 84704, 84720, and 84721 of, to add Sections 2552.5, 12515.5, 17717.5, 17724.5, 17730.2, 41060, 41760.2, 41976.5, 42237.7, 42243.8, 44988, 52213.5, and 54060 to, and to repeal Sections 1705, 2505, 12516, 14070, 14071, 14072, 16302, 16303, 33515, 33517, 33520, 33521, 37062.5, 37063, 37064, 37065.4, 37065.5, 37066, 37067, 37068, 37070, 37071, 37072, 37080, 37081, 37082, 37083, 42210, 42211, 42212, 42213, 42237.6, 46146, 46601, 46605, 46606, 46608, 46610, 46614, 46617, 52317, and 58608 of, the Education Code, to amend Sections 65979 and 65980 of the Government Code, and to amend Section 96 of Chapter 282 of the Statutes of 1979, relating to state and local government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

I am deleting the appropriations and related language contained in Section 37.74 of Assembly Bill No. 2196 for the education of adults in correctional facilities. Since the 1980 Budget Act contains $1,080,000 for these costs, this bill would have provided double funding for this program in 1980–81.

I am also eliminating the $1,000,000 appropriation contained in Section 67.5 of AB 2196 for the mandated local costs associated with Assembly Bill No. 3369. This appropriation would duplicate the appropriation contained in AB 3369 for the same purpose.

With these reductions, I approve Assembly Bill No. 2196.

EDMUND G. BROWN JR., Governor

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

SECTION 1. Section 1705 of the Education Code is repealed.

SEC. 2. Section 2505 of the Education Code is repealed.

SEC. 2.3. Section 2552.5 is added to the Education Code, to read:

2552.5. For purposes of Section 2504 and subdivision (b) of Section 2552, the second condition imposed upon the use of the proceeds for the construction of administration facilities or centers specified in Section 2504 shall not apply for the entire 1979–80 fiscal year and fiscal years thereafter to a county superintendent of schools in a county in which the county board of education became fiscally independent on July 1, 1966.

SEC. 2.5. Section 2553 of the Education Code is amended to read:

2553. For major capital outlay projects or major repair or replacement projects, which cannot be funded by other revenue sources, county superintendents of schools shall be eligible for such funds in the same manner as specified by law for school districts. Any funds apportioned to the county superintendent pursuant to this section shall be restricted to the purposes of this section.

space.

(5) Forward to the district governing board a report recommending uses of surplus space.

(f) An existing district advisory committee having the representation specified in subdivision (c), may be designated as the district advisory committee for the purposes of this section.

(g) In the case of a lease or rental to a private educational institution for the purpose of offering summer school in a facility of the district used under a lease or agreement entered into pursuant to Section 39470, the governing board of any school district may elect not to appoint an advisory committee pursuant to subdivision (c).

SEC. 37.23. Section 39401 of the Education Code, as added by Chapter 736 of the Statutes of 1980, is amended to read:

39401. Notwithstanding the other provisions of this article, any school district governing board may designate not more than two surplus school sites as exempt from the provisions of this article for each planned school site acquisition if the school district has an immediate need for an additional school site and is actively seeking to acquire such an additional site, and may exempt not more than one surplus school site if the district is seeking immediate expansion of the classroom capacity of an existing school by 50 percent or more.

The exemption provided for by this section shall be inapplicable to any school site which, under a lease executed on or before July 1, 1974, with a term of 10 years, was leased to a city of under 100,000 population for park purposes, was improved at city expense, and used for public park purposes.

SEC. 37.25. Section 39510 of the Education Code is amended to read:

39510. The governing board of any school district may sell any personal property or school supplies belonging to the district to the federal government or its agencies, to the state, to any county, city and county, city or special district, or to any other school district or any agency eligible under the federal surplus property law, (40 U.S.C., Sec. 484(j)(3)) and the governing board of another school district may purchase the property, for an amount equal to the cost thereof plus the estimated cost of purchasing, storing, and handling the property, without advertisement for or receipt of bids or compliance with any other provisions of this code. The governing board of any school district may purchase any personal property or school supplies for the purpose of selling them, pursuant to this section.

This section does not authorize the purchase, for the purpose of resale, of standard school supplies and equipment by any elementary school district governed by school trustees.

SEC. 37.3. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established

pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to subdivision (f) of Section 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780).

SEC. 37.45. Section 41060 is added to the Education Code, to read:

41060. (a) The enactment of Article XIII A of the California Constitution by the voters of California at the June 6, 1978, primary election severely reduced the property taxing authority of local school districts. The California Legislature has replaced that local property taxing authority with state revenues derived from state taxing authority. It is the intent of the Legislature that local property tax revenues replaced by state funds are to continue to be considered local effort for purposes of federal grants pursuant to Public Law 81-874.

(b) For purposes of computing federal grants pursuant to Public Law 81-874 which requires a local tax effort or maintenance of effort, the fiscal year 1977–78 shall be used as a base year. The percentage of local effort for fiscal year 1977–78 shall be calculated as follows:

(1) The total amount of state and local funds earned by school districts, as determined by Article 2 (commencing with Section 42230) of Chapter 7 of Part 24 as it read prior to repeal by Chapter 282 of the Statutes of 1979 shall be divided into the amount of local tax receipts including tax relief subventions.

(2) The resultant percentage shall be used as the percent of local effort or contribution.

SEC. 37.46. Section 41301 of the Education Code is amended to read:

41301. The amount transferred to Section A of the State School Fund pursuant to Section 14002 and Section 14004 shall be expended in accordance with the following schedule:

(a) Twenty-six dollars and ninety-five cents ($26.95) multiplied by the total average daily attendance credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of average daily attendance, to high school districts which during the preceding school year had less than 301 units of average daily attendance, and

struction of administration facilities in Placer County, the county affected by Section 2.3 of this act, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

SEC. 70.6. (a) If the Superintendent of Public Instruction determines that there are not sufficient funds available from the amount appropriated pursuant to category (b) of Item 352 of the Budget Act of 1980 to support regional occupational centers and programs operated by county superintendents of schools, then the Superintendent of Public Instruction shall transfer funds appropriated pursuant to category (a) of Item 352 to category (b) to reduce or eliminate the insufficiency.

(b) In the event of application of Section 41972 of the Education Code to apportionments from category (a) of Item 352, transfers authorized by this section shall be similarly adjusted.

SEC. 70.7. Section 8.9 of this act shall become operative only if Assembly Bill No. 2973 of the 1979–80 Regular Session of the Legislature is chaptered.

SEC. 71. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 72. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order for the provisions of this act to apply for the entire 1980–81 fiscal year and to provide school districts sufficient time to plan and adopt new budgets as early as possible for the 1980–81 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 371

An act to amend Section 39618 of, and to add Section 49410 to, the Education Code, relating to schools.

[Approved by Governor September 8, 1981. Filed with Secretary of State September 9, 1981.]

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

SECTION 1. It is the intent and purpose of this act to encourage school districts to replace potentially harmful asbestos materials.

SEC. 2. Section 39618 of the Education Code is amended to read:

39618. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, encapsulation or replacement of asbestos materials, and such other items of maintenance as may be approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the

district deferred maintenance fund for purposes of this section.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 3. Section 49410 is added to the Education Code, to read:

49410. (a) The governing board of every school district may conduct programs to control or eliminate health problems posed by the presence of asbestos in its schools. If a program is conducted, the presence of asbestos shall be determined from current available surveys of asbestos in schools.

(b) For purposes of subdivision (a), school districts may be reimbursed from the State School Deferred Maintenance Fund pursuant to Section 39618 and Section 39619, except as provided in subdivision (c).

(c) To the extent that federal funds become available for the removal of asbestos from schools, such federal funds may be used to reimburse districts for programs conducted pursuant to this section. Such federal funding shall be in lieu of funding specified in subdivision (b).

CHAPTER 649

An act to amend Sections 17722, 17761, 39619, and 39619.5 of, and to add Sections 17750 and 17761.5 to, the Education Code, relating to school property, and making an appropriation therefor.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

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any other purposes provided for in this article.

SEC. 3. Section 17761 of the Education Code is amended to read:

17761. (a) Except as provided in subdivision (b), each school district to which funds are allocated pursuant to this chapter shall either: (1) provide 10 percent of the cost of the project from other district funds; or (2) agree to contribute, each year for a period of 10 years, to the State School Deferred Maintenance Fund an amount equal to 1 percent of the cost of the project.

(b) Both of the requirements prescribed by subdivision (a) may be waived by the State Allocation Board in a case of hardship, as defined by the State Allocation Board.

SEC. 4. Section 17761.5 is added to the Education Code, to read:

17761.5. The Controller shall, during each of the next 10 fiscal years following the fiscal year in which the executive officer of the State Allocation Board certifies to him or her that a school district has agreed to contribute to the State School Deferred Maintenance Fund an amount equal to 1 percent of the cost of the project, pursuant to Section 17761, deduct the total amount of the annual payment of the district in equal amounts from each of the February, March, April, and May installments of the apportionments made to the district from Section A of the State School Fund.

In no event shall the deductions exceed an amount which would result in a district's receiving, in any school year, from the State School Fund, less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the preceding school year.

On order of the Controller, the amount so deducted shall be transferred to the State School Deferred Maintenance Fund.

SEC. 5. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever, in a given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to subdivision (f) of Section 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available

pursuant to Chapter 24 (commencing with Section 17780).

SEC. 6. Section 39619.5 of the Education Code is amended to read:

39619.5. Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in addition to the apportionments made pursuant to Section 39619, in instances of extreme hardship. An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

As a result of the determination made in the preceding paragraph, the State Allocation Board may increase the apportionment to a school district by such amount as it determines necessary to complete the critical project, provided the district agrees that state apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment.

SEC. 7. The obligation to repay as specified in item (2) of subdivision (a) of Section 17761 of the Education Code shall continue regardless of the possible repeal of that section as provided for in Section 17764 of the Education Code.

CHAPTER 1093

An act to amend Section 2558 of, as amended by Chapter 100 of the Statutes of 1981, to amend Sections 39619 and 39809.5 of, to amend Sections 41856 and 42103 of, as added by Chapter 100 of the Statutes of 1981, to amend Sections 42238, 42239, 42241, and 42243.7 of, as amended by Chapter 100 of the Statutes of 1981, to amend Section 46118 of, to amend Sections 49531 and 49552 of, as amended by Chapter 102 of the Statutes of 1981, to amend Section 52616 of, as added by Chapter 100 of the Statutes of 1981, to amend Section 56860 of, to amend Section 59300 of, as added by Chapter 102 of the Statutes of 1981, to add Section 42240.1 to, to repeal and add Section 14041 to, to repeal Sections 41855, 42241.3, and 42241.5 of, and to repeal Chapter 11 (commencing with Section 42900) of Part 24 of, the Education Code, to amend Section 3543.2 of the Government Code, as amended by Chapter 100 of the Statutes of 1981, and to repeal and add Section 7902.1 of the Government Code, as added by Chapter 15

paragraphs (2) and (3).

(5) Warrants in the months of September to November, inclusive, shall include one-tenth of the estimated total amounts of the special purpose apportionment, as determined by the Superintendent of Public Instruction or Chancellor of the California Community Colleges. Warrants in December shall include one-tenth of the amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as the special purpose apportionment, as adjusted, if necessary, to correct excesses or deficiencies in the estimates made for purposes of the warrants in the months of September to November, inclusive. An additional one-tenth of the amounts of the special purpose apportionment shall be included in the warrants for the months from January to June, inclusive.

(6) Warrants in June shall include the total amounts certified by the Superintendent of Public Instruction or Chancellor of the California Community Colleges as the final apportionment.

(7) Notwithstanding any provision of paragraph (2) to the contrary, for school districts which reported less than 5,000 units of average daily attendance in the 1979–80 fiscal year and which received 39 percent or more of their total revenue limits from local property taxes in that fiscal year, warrants for amounts apportioned to the districts shall be for amounts equal to 15 percent in July, August, September, and October; 0 percent in November and December; and 6 percent in January of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment. Warrants for amounts apportioned to the districts for the months of February to May, inclusive, shall be in accordance with paragraph (3), and for the month of June, shall be in accordance with paragraph (4).

(b) The drawing of the warrants required to be drawn during any one of the months mentioned may be postponed by the Controller for not to exceed 30 days, but the total amounts due the several counties during any fiscal year shall be paid within the fiscal year. The warrants shall be paid by the State Treasurer from the State School Fund and are not subject to the provisions of Government Code Section 925.6.

SEC. 3. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the

State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10.

SEC. 4. Section 39809.5 of the Education Code is amended to read:

39809.5. (a) In no case shall the sum of the state aid received and the parent fees collected in a fiscal year exceed actual operating cost of home-to-school transportation in that fiscal year.

(b) If excess fees are collected due to errors in estimated costs, fees shall be reduced in succeeding years.

(c) The governing board shall certify to the county superintendent that districts have levied fees in accordance with law, and that fees have been reduced and excess fee revenue eliminated whenever excess fees have been charged.

SEC. 5. Section 41855 of the Education Code is repealed.

SEC. 6. Section 41856 of the Education Code, as added by Chapter 100 of the Statutes of 1981, is amended to read:

41856. For the 1981–82 fiscal year, from Section A of the State School Fund the Superintendent of Public Instruction shall apportion to each school district the amount of its approved home-to-school transportation costs for the previous fiscal year, but not to exceed 1.06 times the sum of the reduction made pursuant to subdivision (e) of Section 42241, the state reimbursement received in the prior fiscal year for home-to-school transportation costs, and the state apportionment, if any, received in the prior fiscal year pursuant to former Section 41855. Districts not submitting a 1979–80 fiscal year State Department of Education transportation cost report for approval may do so and the superintendent shall determine the approved costs in the same manner as for those districts having submitted a report.

SEC. 7. Section 42103 of the Education Code, as added by Chapter 100 of the Statutes of 1981, is amended to read:

42103. The governing board of each school district shall hold a public hearing on the proposed budget for the ensuing fiscal year in a schoolhouse of the district, or some other place conveniently accessible to the residents of the district, any day prior to the end of the first week in September, at which any resident in the district may appear and object to the proposed budget or any item in the budget.

The hearing may be concluded on the proposed budget when there are no requests for further hearing on file. The budget shall not be finally adopted by the governing board of the district until after the public hearing has been held.

The proposed budget, showing program expenditures, cash

apportioned by the Superintendent of Public Instruction to the Fullerton High School District for the cost of an adult education program that commenced July 1, 1980, and was discontinued on January 26, 1981.

This section shall be deemed operative for the entire 1980–81 fiscal year as though it had been enacted into law and become operative on July 1, 1980. The Superintendent of Public Instruction and other public officers may, for such purposes, take all necessary steps to effect the required adjustments, including the authority to adjust allowance computations, apportionments, and disbursements ordered from Section A of the State School Fund.

CHAPTER 525

An act to amend Section 39619 of the Education Code, relating to school property.

[Approved by Governor August 17, 1982. Filed with Secretary of State August 18, 1982.]

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

SECTION 1. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to

a maximum of ½ percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10.

CHAPTER 753

An act to amend Section 39619 of the Education Code, relating to school property.

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[Approved by Governor September 12, 1983. Filed with Secretary of State September 13, 1983.]

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

SECTION 1. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b) no district shall be required to budget from local district funds an amount greater than ½ percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

CHAPTER 800

An act to add Section 39619.3 to the Education Code, relating to school districts and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1983. Filed with Secretary of State September 14, 1983.]

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

SECTION 1. Section 39619.3 is added to the Education Code, to read:

39619.3. Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 39363, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 39619, if it meets all of the following criteria:

(a) There are excess revenues which resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district has a fiscal emergency in fiscal year 1982–83, and is expected to have one in the 1983–84 fiscal year.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

(c) The base revenue limit of the district does not exceed the limit established by subdivision (e) of Section 42238.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide school districts who are faced with a verified fiscal emergency with necessary operating funds at the earliest possible date, thus avoiding potential school closures, it it necessary that this act take effect immediately.

CHAPTER 1234

An act to amend Section 39619.5 of, and to add Section 39619.55 to, the Education Code, relating to schools.

[Approved by Governor September 17, 1984. Filed with Secretary of State September 17, 1984.]

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

SECTION 1. Section 39619.5 of the Education Code is amended to read:

39619.5. (a) Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship, if the district had

more than 2,500 units of average daily attendance, excluding summer session attendance, in the prior fiscal year. The apportionment shall be in addition to the apportionments made pursuant to Section 39619.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project, provided the district agrees that state apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment.

SEC. 2. Section 39619.55 is added to the Education Code, to read:

39619.55. (a) Notwithstanding the limitations of Section 39619, the State Allocation Board shall each year reserve 5 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts in instances of extreme hardship, if the district had less than 2,501 average daily attendance, excluding summer session attendance, in the prior fiscal year. The apportionment shall be in addition to the apportionments made pursuant to Section 39619.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project in its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may do any of the following:

(1) Increase the apportionment to an eligible school district by the amount it determines necessary to complete the critical project, and require a contribution by the district.

(2) Waive repayment by the district.

(3) Reduce state apportionments pursuant to Section 39619 in future years to offset the increased apportionment, unless the board has waived repayment pursuant to paragraph (2).

CHAPTER 1751

An act to amend Section 39618 of, to add Sections 39619.6, 39619.8, 39619.9, 49410.2, and 49410.5 to, to add and repeal Section 39619.7 of, and to repeal and add Section 49410 of, the Education Code, relating to asbestos in schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1984. Filed with Secretary of State September 30, 1984.]

The continued presence of asbestos within our public school facilities poses a significant threat to all who enter those buildings. This legislation provides a realistic program of cooperative funding to support projects to remove asbestos from the public schools of our state.

However, I believe that the support for the first year of this program should be from the Tidelands Oil Revenue reappropriation found in SB 1297. Therefore, I am eliminating the $22.5 million appropriation contained in Section 10 of Assembly Bill No. 2377 in lieu of the one found in SB 1297. In addition, it should be noted that federal funds will soon be made available to California as a result of passage of recent federal legislation (The "Asbestos School Hazard Abatement Act of 1984"). Therefore, in order to avoid supplanting issues, I am reducing the appropriaton for state support of asbestos abatement programs to $10 million for 1984–85.

However, to assure that this program attains its desired result of eliminating asbestos from our public schools, I will see that the 1985–86 Budget proposes appropriations sufficient to provide the support necessary to fund the State's portion of asbestos abatement programs in the public schools.

In addition, I am eliminating the second year funding for this program contained in Section 10(b) to allow the determination of needs to be made in the annual budget review process in consideration of actual applications for assistance, and other statewide program needs and available resources.

With this deletion, I approve Assembly Bill No. 2377.

GEORGE DEUKMEJIAN, Governor

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

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SECTION 1. Section 39618 of the Education Code is amended to read:

39618. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 2. Section 39619.6 is added to the Education Code, to read:

39619.6. The State Allocation Board shall develop board policies for the apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410. The policies shall provide for the allocation of funds on a matching basis, or the board may determine, based on each application, to increase the allocation to any school district by the amount it determines is necessary to complete critical projects. In making policies pursuant to this section, the board may establish funding priorities based on a determination in each instance as to the imminence of the health hazard posed by the asbestos materials.

SEC. 3. Section 39619.7 is added to the Education Code, to read:

39619.7. (a) For the purpose of Section 39619, the State Allocation Board shall allow each school district to credit one-half of any district general funds spent by the district for the inspection, sampling, analysis, containment, or removal of asbestos materials, during the 1979–80 fiscal year through the 1983–84 fiscal year, which were not part of their deferred maintenance program, as unmatched funds, pursuant to paragraph (a) of Section 39619, in the district's deferred maintenance fund in the 1984–85 fiscal year.

(b) If the credit calculated pursuant to subdivision (a) of this section is greater than the amount that the district could receive from the state apportionment pursuant to paragraph (b) of Section 39619, then the amount that is in excess can be credited as

unmatched funds in the 1985–86 fiscal year.

(c) This section shall become inoperative on June 30, 1986, and, as of January 1, 1987, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1987, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 39619.8 is added to the Education Code, to read:

39619.8. During the 1984–85 and 1985–86 fiscal years, in addition to the apportionment provided pursuant to Section 39619, the State Allocation Board may apportion from the State School Deferred Maintenance Fund to a school district one dollar ($1) for each one dollar ($1) of local funds in excess of the maximum provided by subdivision (b) of Section 39619. However, the apportionment shall not exceed an amount equal to one-half of the moneys spent by the district from its deferred maintenance fund for the inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials during the 1979–80 fiscal year to the 1983–84 fiscal year, inclusive.

SEC. 5. Section 39619.9 is added to the Education Code, to read:

39619.9. The Asbestos Abatement Fund is hereby created, and notwithstanding Section 13340 of the Government Code, all moneys deposited in this fund are continously appropriated to be administered by the State Allocation Board for the purpose of making allocations to school districts and county offices of education pursuant to Sections 39619.6 and 49410.

SEC. 6. Section 49410 of the Education Code is repealed.

SEC. 7. Section 49410 is added to the Education Code, to read:

49410. (a) The Legislature finds that:

(1) There is substantial scientific and medical evidence that human exposure to asbestos fibers significantly increases the likelihood of contracting cancer and other debilitating or fatal diseases such as asbestosis.

(2) Medical and epidemiological evidence suggests that children exposed to asbestos fibers may be especially susceptible to the environmentally induced diseases associated with the exposure.

(3) Substantial amounts of asbestos materials were used in school construction during the period from 1946 through 1973 for fireproofing, soundproofing, decoration, and other purposes.

(4) When these materials age, deteriorate, or become damaged or friable, they release asbestos fibers into the ambient air. This can result in the exposure of school children and school employees to potentially dangerous levels of asbestos fibers.

(5) The presence of asbestos in the air in concentrations far exceeding the normal ambient levels has been found in schools, especially where the asbestos materials have reached a damaged, deteriorated, or disturbed state as a result of abuse, abrasion, water leakage, or forced air circulation.

(6) In view of the fact that the State of California has compulsory attendance laws for children of school age, and these children must be educated in a safe and healthy environment, the hazard

presented by asbestos materials in the schools is of special concern to the Legislature.

(b) As a result of the findings in subdivision (a), it is the intent of the Legislature to provide for the safe and expeditious containment or removal of asbestos materials posing a hazard to health in schools.

(c) As used in this section and Sections 49410.2 and 49410.5, the following terms have the following meanings:

(1) "Asbestos" means naturally occurring hydrated mineral silicates separable into commercially used fibers: specifically chrysotile, amosite, crocidolite, tremolite, anthrophyllite, and actinolite.

(2) "Asbestos materials" means materials formed by mixing asbestos fibers with other products, including, but not limited to, rock wool, plaster, cellulose, clay, vermiculite, perlite, and a variety of adhesives. Some of these materials may be sprayed on surfaces or applied to surfaces in the form of plaster or a textured paint.

(3) "Hazard to health" means that the asbestos material is loose, friable, flaking, or dusting, or is likely to become so within the service life of the material in place.

SEC. 8. Section 49410.2 is added to the Education Code, to read:

49410.2. School districts and county offices of education may apply to the State Allocation Board pursuant to Section 39619.6 for funds for the purposes of containment or removal of asbestos materials posing a hazard to health.

SEC. 9. Section 49410.5 is added to the Education Code, to read:

49410.5. (a) The State Allocation Board shall retain all information provided by school districts making application for funds pursuant to Sections 39619.6, 39619.7, and 39619.8 regarding the actual or estimated cost of inspection and testing for, and encapsulation or removal of, asbestos.

(b) The Legislature finds and declares that:

(1) Federal moneys may be made available to reimburse schools for costs related to asbestos inspection, testing, encapsulation, and removal, and that the distribution of these moneys will be expedited by the early collection of these data.

(2) School districts shall comply with guidelines suggested by the Environmental Protection Agency for the purposes of inspection and testing for asbestos materials, and for the protection and safety of workers and all other individuals during the encapsulation and removal of asbestos.

SEC. 9.5. If AB 3141 is chaptered and becomes effective, the Brea-Olinda Unified School District shall nevertheless be eligible to receive an apportionment of up to one hundred seventy-five thousand dollars ($175,000) pursuant to Section 39619.8 of the Education Code as added by Section 4 of this act. The district may use those funds to repay the loan received by the district pursuant to AB 3141.

SEC. 10. (a) The sum of twenty-two million five hundred thousand dollars ($22,500,000) shall be transferred by the Controller,

from the General Fund to the Asbestos Abatement Fund for the 1984–85 fiscal year, for expenditure by the State Allocation Board in accordance with Section 39619.6 of the Education Code.

(b) On July 1, 1985, the sum of twenty-two million five hundred thousand dollars ($22,500,000), shall be transferred by the Controller, from the General Fund to the Asbestos Abatement Fund for the 1985–86 fiscal year, for expenditure by the State Allocation Board in accordance with Section 39619.6 of the Education Code.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the expeditious containment or removal of asbestos materials posing a hazard to health in schools, it is necessary that this act take effect immediately.

CHAPTER 759

An act to amend Sections 39619.5 and 39619.55 of the Education Code, relating to schools.

[Approved by Governor September 18, 1985. Filed with Secretary of State September 18, 1985.]

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

SECTION 1. Section 39619.5 of the Education Code is amended to read:

39619.5. (a) Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship. The apportionment shall be in addition to the apportionments made pursuant to Section 39619. Not less than one-half of all funds made available by this section shall be apportioned to school districts that had an average daily attendance, excluding summer session attendance, of less than 2,501 during the prior fiscal year.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project.

SEC. 2. Section 39619.55 of the Education Code is amended to read:

39619.55. As a result of the determination made in Section

39619.5, the State Allocation Board may do any of the following:

(a) Increase the apportionment to an eligible school district by the amount it determines necessary to complete the critical project, and require a contribution by the district.

(b) Waive repayment by the district, in whole or in part.

(c) Reduce state apportionments pursuant to Section 39619 in future years to offset the increased apportionment.

The State Allocation Board shall develop and adopt regulations for the application of subdivisions (a), (b), and (c). The regulations may give consideration to a school district's financial resources, ongoing deferred maintenance needs, and the nature of the project for which the hardship apportionment is requested.

The waiver authorized in subdivision (b) may be applied by the board to any repayment otherwise required by law, regardless of apportionment date.

CHAPTER 1587

An act to amend Section 7137 of, and to add Sections 7028.1, 7028.2, 7058.5, 7065.01, and 7118.5 to, the Business and Professions Code, to add Section 49410.7 to the Education Code, to add Section 24223 to, and to add Chapter 2.5 (commencing with Section 24275) to Division 20 of, the Health and Safety Code, and to add Sections 6325.5, 6436, 6501.5, 6501.7, 6501.8, 6501.9, 6503.5, 6505.5, and 6508.5 to the Labor Code, relating to asbestos, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

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

SECTION 1. Section 7028.1 is added to the Business and Professions Code, to read:

7028.1. Any contractor required to be certified pursuant to Section 7058.5, who is not certified, shall:

(a) Upon a first offense, be subject to a civil prosecution with a mandatory civil penalty of not less than one thousand dollars

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, or a change of responsible managing officer or responsible managing employee, shall not exceed fifty dollars ($50).

(c) The initial license fee for an active or inactive license shall not exceed one hundred fifty dollars ($150).

(d) The renewal fee for an active license shall not exceed two hundred dollars ($200).

The renewal fee for an inactive license shall not exceed fifty dollars ($50).

(e) The delinquency fee is an amount equal to 50 percent of the renewal fee, but not more than twenty-five dollars ($25), subject to the provisions of Section 163.5.

(f) The registration fee for a home improvement salesperson shall not exceed fifty dollars ($50).

(g) The renewal fee for a home improvement salesperson registration shall not exceed seventy-five dollars ($75).

(h) The application fee for an asbestos certification exam shall not exceed fifty dollars ($50).

SEC. 6. Section 49410.7 is added to the Education Code, to read:

49410.7. (a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and air monitoring showing an airborne concentration of asbestos in excess of the standard .01 fibers/cc and 300 nanograms per cubic meter (ng/m^3) by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher.

(b) For purposes of air monitoring, the operating agency for each public school building in which friable asbestos-containing materials (other than pipe and block insulation) have been identified shall monitor airborne asbestos levels in each sampling area. Each sampling area in which asbestos-containing materials have been identified shall be monitored for at least eight hours during a period of normal building activity. Analysis of samples shall be by Transmission Electron Microscopy (TEM) methods, in accordance with the Environmental Protection Agency provisional method and update, to measure the number of observable asbestos fibers. The results of this monitoring shall be recorded in terms of the number of visible fibers greater than 5 microns in length per cubic centimeter of air (f/cc) in accord with standard definitions for asbestos monitoring established by the Occupational Safety and Health Administration. The results of the monitoring shall also be recorded in nanograms per cubic meter (ng/m^3).

"Sampling area," as used in this section, means any area, whether contiguous or not, within a building that contains friable material that is homogenous in texture and appearance.

(c) Any public primary or secondary school building in which

asbestos abatement work has been performed shall not be reoccupied until air monitoring has been conducted to show that the airborne concentration of asbestos does not exceed the air monitoring standard of subdivision (a). Not less than one month after the reoccupancy of the school building where asbestos abatement work has occurred, the building shall be remonitored to determine compliance with subdivision (b).

(d) "School building," as used in this section, means any of the following:

(1) Structures used for the instruction of public school children, including classrooms, laboratories, libraries, research facilities, and administrative facilities.

(2) School eating facilities and school kitchens.

(3) Gymnasiums or other facilities used for athletic or recreational activities or for courses in physical education.

(4) Dormitories or other living areas of residential schools.

(5) Maintenance, storage, or utility facilities essential to the operation of the facilities described in paragraphs (1) to (4).

(e) School districts and county officer of education may apply for reimbursement from the Asbestos Abatement Fund for the costs of air monitoring completed pursuant to this section.

SEC. 6.5. Section 24223 is added to the Health and Safety Code, to read:

24223. Not later than January 1, 1987, the Division of Occupational Safety and Health shall propose a regulation concerning asbestos-related work, as defined in Section 6501.8 of the Labor Code, to the Occupational Safety and Health Standards Board for review and adoption so as to protect most effectively the health and safety of employees. The regulation shall also include specific requirements for certification of all employees engaged in asbestos-related work, for certified supervisors with sufficient experience and authority to be responsible for asbestos-related work, and for a qualified person, who shall be responsible for scheduling any air sampling, laboratory calibration of air sampling equipment, evaluation of sampling results, and for conducting any respirator fit testing and evaluating the results of the tests.

SEC. 7. Chapter 2.5 (commencing with Section 24275) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 2.5. ASBESTOS SAFETY

24275. (a) The State Department of Health Services, in conjunction with the study required pursuant to Assembly Bill 2070 of the 1985–86 Regular Session of the Legislature, if enacted, shall report to the Legislature by January 1, 1987, and periodically thereafter, on the most effective air monitoring standard for the airborne concentration of asbestos in any public school building that is both economically and technologically feasible. If the department believes that the air monitoring standard for asbestos in public school

be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 18. 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:

Asbestos removal work is increasing in California, particularly with public schools which will be contracting to have asbestos removed during summer and Christmas vacation periods. To ensure that the Division of Occupational Safety and Health shall have sufficient time to review existing asbestos safety regulations, and in order for air monitoring standards for school asbestos abatement work to become effective as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 886

An act to amend Sections 17708, 17714, 17736, 17740, 17742, 17742.5, 17747, 39015, 39140, 39246, 39305, and 39381, of, to amend and renumber Sections 17717.6 and 17717.7 of, to add Sections 17708.3, 17719.5, 17721.3, 17722.7, 17740.1, 17740.3, 17742.2, 17742.3, 17742.7, 17746.7, 17788.5, 39619.2, and 42250.3 to, to repeal Chapter 23 (commencing with Section 17760) of Part 10 of, and to repeal and add Section 17749 of, the Education Code, to add Section 33445.5 to the Health and Safety Code, and to add Section 20111.5 to the Public Contract Code, relating to school facilities, and making an appropriation therefor.

[Approved by Governor September 18, 1986. Filed with Secretary of State September 18, 1986.]

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

SECTION 1. This act shall be known and may be cited as the Greene-Hughes School Facilities Act of 1986.

SEC. 2. Section 17708 of the Education Code is amended to read:

17708. A fund is hereby created in the State Treasury to be known as the State School Building Lease-Purchase Fund. All money in the State School Building Lease-Purchase Fund, including any money deposited in that fund from any source whatsoever, and notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated for expenditure pursuant to this chapter.

The State Allocation Board may apportion funds to school districts for the purposes of this chapter from funds transferred to the State School Building Lease-Purchase Fund from any source.

SEC. 3. Section 17708.3 is added to the Education Code, to read:

17708.3. (a) The board may establish a revolving loan account within the State School Building Lease-Purchase Fund, and may allocate from the fund to that account those amounts it determines to be necessary for the purposes of this section.

(b) The board may apportion to any school district that submits to the board a statement of its intent to subsequently file a project application under this chapter, a loan for the purpose of advance planning and related administrative costs pursuant to the preparation of that application. The loan amount shall not exceed 3 percent of the estimated project cost, as determined pursuant to the building cost standards established under this chapter.

(c) If, within a period of 24 months following the receipt of any loan amounts under this section, the project for which those advance planning funds were provided has not been found by the board to

the project be utilized for relocatable structures:

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, where the board finds that special conditions of terrain, climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a). The cost of acquiring those structures shall apply to fulfilling the district's funding requirement under Section 17705.5.

SEC. 23. Chapter 23 (commencing with Section 17760) of Part 10 of the Education Code is repealed.

SEC. 24. Section 17788.5 is added to the Education Code, to read:

17788.5. The board may empower any lessee to act as its agent in the performance of acts authorized under this chapter with regard to portable classrooms to be made available to that lessee, including, but not necessarily limited to, contracting for architectural and construction services and purchasing furniture and equipment.

SEC. 25. Section 39015 of the Education Code, as amended by Chapter 70 of the Statutes of 1986, is amended to read:

39015. (a) Whenever a school district acquires or has acquired a site for school purposes, as determined by the State Allocation Board, and does not use the site within (1) five years of the date of acquisition for the kindergarten, if any, and any of grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district, or, (2) seven years of the date of acquisition for any of grades 7 to 12, inclusive, maintained by a high school district or a unified school district, or if a school district has a site at any grade level that has previously been used but has not been used for school purposes within the preceding five years, the school district shall be subject to nonuse payments, unless the State Allocation Board, from time to time, makes a determination that the school district will utilize the property for the purpose for which it was intended within a reasonable period of time, in a specific amount for each additional year in which the site is retained and not used by the district beyond the foregoing specified periods, except the first additional year shall be deemed to end not earlier than April 30, 1973.

(b) Payment shall not be required under this section as to any site having a value of twenty thousand dollars ($20,000) or less. Commencing on January 1, 1988, and annually thereafter, the State Allocation Board shall increase this exemption figure by the amount of the current fiscal year inflation adjustment specified in Section

42238.1, if any.

(c) The payments required shall be computed by the Executive Officer of the State Allocation Board and certified to the Controller, and payments shall be equal to one one-hundredth ($1/100$) of the original purchase price of the site modified by either a factor reflecting the change in assessed value of all lands in the state from the date of purchase of the site to the current date or any other factor that in the determination of the State Allocation Board is applicable to the site under consideration.

(d) Whenever the State Allocation Board has determined that a school district in good faith has, within the preceding year, advertised the school site for sale to the highest bidder pursuant to the provisions of Article 4 (commencing with Section 39360) of Chapter 3 of Part 23 and has received no bids that in the judgment of the State Allocation Board reflect the fair market value of the property, the Executive Officer of the State Allocation Board shall not compute any nonuse payments for the site for a period of one year beyond the date of the determination.

(e) Nonuse payments shall not be required for any year with respect to a school site that for one-half or more of the number of days of that year has been utilized (1) by the school district, or by any other governmental entity pursuant to agreement with the school district, for school or community playground, playing field, or other outdoor recreational purposes, or (2) by the State Allocation Board, pursuant to agreement with the school district, for the storage of emergency portable classrooms.

Nonuse payments shall not be required for any year with respect to a school site which was leased at least one-half of the days in that year in a manner that subjected the site to property taxes equal to the taxes which would have been paid if the site had been sold.

SEC. 26. Section 39140 of the Education Code is amended to read:

39140. (a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or, if the estimated cost exceeds twenty thousand dollars ($20,000), the reconstruction or alteration of or addition to any school building, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Administrative Code, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a school district to perform work with its own forces in excess of the limitations set forth in Sections 39640 and 39649.

(b) Whenever repairs due to fire damage, not including any damage caused by wind or earthquake, must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards

may be used without modification, providing all other provisions of this article are carried out.

(c) Notwithstanding any other provision of law, no school district shall be authorized to construct or reconstruct any school building, regardless of the source of funding, unless and until one of the following criteria has been met:

(1) The district architect has certified that the project satisfies the construction cost and allowable area standards prescribed by Chapter 22 (commencing with Section 17700) of Part 10.

(2) The governing board of the district has, by resolution, indicated the agreement of the district that any school building construction or reconstruction that exceeds those construction cost and allowable area standards or any allowable building area computed for an attendance area pursuant to Section 17741 shall, in the event of the district's subsequent application for state funding for school facility construction, be deducted from the allowable building area for which the district would otherwise have been eligible, which restriction shall not be subject to waiver or exception, as may otherwise be provided by law, including, but not limited to, Section 17742.

If it is determined that, for any reason, a school district failed to comply with the requirement of this section, the district shall not be eligible for any additional building area pursuant to Section 17749 and may be denied any time priority established for the particular project pursuant to Section 17716.

SEC. 27. Section 39246 of the Education Code is amended to read:

39246. (a) The governing board of any school district may lease relocatable structures for a term extending to the expected duration of use by the school district, but not to exceed 20 years, or permanent school facilities for a term extending to the expected duration of use by the school district, but not to exceed 30 years.

(b) Notwithstanding subdivision (a), the governing board of any school district that has entered into a joint powers agreement pursuant to the provisions of Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for the purpose of leasing relocatable structures to participating school districts, may lease the relocatable structures for a term extending to the expected duration of use by the school district, but not to exceed 15 years.

(c) Any lease agreement or contract entered into pursuant to this section shall be initiated by resolution authorizing the action and prescribing the terms thereof adopted by vote of a majority of the members of the governing board.

SEC. 28. Section 39305 of the Education Code is amended to read:

39305. (a) Notwithstanding Section 39314, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar ($1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction

thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

SEC. 29. Section 39381 of the Education Code is amended to read:

39381. The governing board of a school district may, with the approval of the county board of supervisors, sell or lease any building of the district together with the site upon which the building is located, without complying with any other provisions of this article, provided that the county board of supervisors finds that all of the following conditions exist:

(a) The sale or lease is to be made to an incorporated nonprofit tax-exempt community or civic organization with a membership comprised predominantly of persons residing in the community in which the building and site are situated.

(b) The building is not suitable for school purposes.

(c) The building has an historic value and its preservation and utilization for the benefit of the community will best be ensured by sale or lease to an organization specified in subdivision (a).

(d) The sale or lease is to be executed for a consideration to enure to the school district reflecting the fair market value of the property, or its fair rental value, as the case may be, except that the sale may be executed for a consideration that is less than the fair market value of the property if all of the following conditions exist:

(1) More than 50 percent of the buildings on the site have been designated as historically significant by the State Historical Resources Commission.

(2) For a period of 25 years, commencing with the date that possession of the property is transferred, the building or buildings designated pursuant to paragraph (1) shall be used and maintained for public benefit as an historical resource, and the site shall otherwise be available for public access and use, including, but not limited to, park and recreational uses. Any violation of this condition shall result in the automatic reversion of title to the property so transferred, without remuneration, to the transferor school district. The condition set forth in this paragraph does not prohibit any use of the site that is necessary or appropriate to its use and maintenance for historical purposes.

(3) The consideration paid is equal to or greater than the sum of the actual cost of the acquisition of the property by the school district and the actual cost of any capital improvements made to the property.

(e) Adequate provision has been made in connection with the sale or lease transaction to protect the district against all civil liabilities which might arise in connection with any use of the building and site.

SEC. 30. Section 39619.2 is added to the Education Code, to read:

39619.2. (a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 39619. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than 1 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds.

SEC. 31. Section 42250.3 is added to the Education Code, to read:

42250.3. (a) A school district may apply for year-round education incentive payments in excess of those provided for in Section 42250 if the school district demonstrates to the State Allocation Board all of the following:

(1) There is substantial overcrowding in the school district or high school attendance areas as demonstrated by current enrollment, capacity of facilities, and growth projections allowed under law.

(2) The district will use the year-round education configuration to increase the capacity of its facilities and thereby reduce the need for new facilities or more costly alternatives.

(3) The district intends to reach a minimum goal of 15 percent more pupils enrolled in its facilities beyond capacity established for those facilities.

(4) Other educationally sound remedies commonly used to relieve overcrowding have been examined and used where appropriate.

(5) The district would be allowed to construct new facilities pursuant to state law absent the use of year-round education.

(b) A school district that meets all the criteria described in subdivision (a) shall have its year-round education incentive

(1) Allocating funding with less state involvement and eligibility has been determined.

(2) Allocating funding on the basis of availability of teaching spaces as opposed to total square footage.

(3) Exploring the possibility of the use of self-certification on documents submitted by applicant districts with the intent of limiting steps in the current process.

(4) Improving enrollment project methods, including more efficient and timely use of California Basic Education Data System (CBEDS) information.

(5) Establishing regional school facility planning units through the county offices of education.

(6) Such other recommendations as the contractor may suggest to improve the efficiency of the administrative processes related to state funding for school facilities.

(7) Making greater use of automation in the application process.

For any improvements to the current process determined to be both feasible and desirable, the contractor shall propose specific implementation methods, time tables, and costs or savings. The contractor shall submit a preliminary report on or before August 1, 1987, and a final report on or before January 10, 1988.

The Department of General Services, Office of Local Assistance, shall report to the Office of the Legislative Analyst on or before November 1, 1988, on the status of implementation of the recommendations made by the study contractor.

SEC. 38. Sections 1 to 37, inclusive, of this act shall become operative only if Assembly Bill 2926 is enacted and becomes effective on January 1, 1987.

SEC. 39. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

CHAPTER 1258

An act to amend Section 39619.3 of the Education Code, relating to school districts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1986. Filed with Secretary of State September 29, 1986.]

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

SECTION 1. Section 39619.3 of the Education Code is amended to read:

39619.3. Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 39363, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 39619, if it meets all of the

following criteria:

(a) There are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district had a fiscal emergency in fiscal year 1984–85 or 1985–86 fiscal year.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

SEC. 2. The State Allocation Board shall waive the deferred maintenance requirement of Section 39363 of the Education Code for the Berkeley Unified School District if the district sells surplus property as part of the district's plan to repay an emergency apportionment pursuant to Sections 39619.3 and 41320. This waiver provision shall remain in effect until July 1, 1989. The State Allocation Board shall not grant a waiver until the board receives a statement from the Superintendent of Public Instruction and the trustee appointed pursuant to Section 4 of this act, that the Berkeley Unified School District complied with Sections 39295 to 39299, inclusive, of the Education Code regarding the declaration and sale of surplus properties.

SEC. 3. (a) The sum of three million dollars ($3,000,000) is hereby appropriated from the General Fund to Section A of the State School Fund for emergency apportionment to the Berkeley Unified School District, pursuant to Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code, for its expenditure obligations for the 1985–86 fiscal year. These funds shall not be apportioned unless and until the Superintendent of Public Instruction approves the district's repayment plan.

(b) Repayment of this apportionment pursuant to Section 41323 of the Education Code shall commence as soon as possible after the Superintendent of Public Instruction approves the repayment plan, but no later than July 1, 1987.

SEC. 4. As a condition on the receipt by the Berkeley Unified School District of any emergency apportionment funds pursuant to Section 3, in addition to complying with Article 2 (commencing with Section 41320) of Chapter 3 of the Education Code, all of the following conditions shall apply:

(a) The Superintendent of Public Instruction shall appoint a trustee having recognized expertise in education, management, and finance, and who shall be bonded. The costs of the trustee and of the bonding shall be borne by the district. The Superintendent of Public Instruction shall establish the terms and conditions of employment, and the remuneration of, the trustee, who shall serve at the pleasure of, and report directly to, the superintendent. The trustee shall be discharged at the time the total apportionment made under Section 3 of this act is repaid, including interest.

(b) The trustee shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the school district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The trustee shall approve or reject all reports and other materials required from the district pursuant to Article 2 (commencing with Section 41320) of Chapter 3 of the Education Code. The Superintendent of Public Instruction, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount of up to one thousand dollars ($1,000) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000) of the Education Code, and shall report to the Legislature any failure of the district to comply with the requirements of this section.

(c) For the 1986–87 fiscal year and each fiscal year thereafter, the Controller shall conduct an audit of the books and accounts of the district, as provided by Section 41020 of the Education Code. Any audit conducted under this subdivision for the preceding fiscal year shall be deemed by the Superintendent of Public Instruction to fulfill the requirement for an audit for that fiscal year described in Section 41020 of the Education Code. The costs of these services shall be borne by the district, in an amount not to exceed the salary expense of two temporary full-time employees assigned to this purpose. The Department of Finance shall approve the addition of two temporary full-time positions funded through reimbursement by the local school district for the purpose of completing these audits. These audits shall be required until the Controller determines, in consultation with the Superintendent of Public Instruction, that the district has not deviated from the financial plan approved under Section 41320 of the Education Code and that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made under Section 3 is repaid, including interest.

(d) The county superintendent of schools in which the district is situated shall provide any information and other assistance that the Superintendent of Public Instruction may require in this respect until the apportionment made under Section 3 is repaid, including interest.

(e) The district shall develop and the State Superintendent of Public Instruction shall approve an educational plan, which includes, but is not necessarily limited to, details on how educational programs, personnel, facilities, and other programs will be affected by each fiscal plan.

SEC. 5. Due to the unique circumstances concerning the Berkeley Unified School District, including the difficulties resulting from past fiscal management practices and the critical need to ensure the financial recovery of the district, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 6. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the Berkeley Unified School District which is faced with a verified fiscal emergency with operating funds at the earliest possible date, thus avoiding potential school closures, it is necessary that this act take effect immediately.

CHAPTER 1451

An act to amend Sections 7028.1, 7028.2, 7058.5, 7065.01, and 7118.5 of the Business and Professions Code, to amend Section 49410.7 of the Education Code, to amend Section 66780.5 of the Government Code, to add Section 25143.7 to, and to repeal Section 24223 of, the Health and Safety Code, and to amend Sections 6436, 6501.5, 6501.8, 6501.9, and 6505.5 of, and to add Section 9021.5 to, the Labor Code, relating to asbestos abatement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1986. Filed with Secretary of State September 30, 1986.]

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

SECTION 1. The Legislature finds and declares that exposure to friable asbestos poses a significant health and public safety hazard; that the removal of asbestos from buildings must be done in a manner that does not pose a threat to the health and safety of the workers or the public or to the environment; and that it has been determined that, when disposed of properly, asbestos is of little threat to the environment.

SEC. 1.3. Section 7028.1 of the Business and Professions Code is amended to read:

7028.1. Any contractor who performs or engages in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, is subject to one of the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor's license, and a fine of not less than three thousand dollars ($3,000) or more than five thousand dollars ($5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment.

SEC. 1.4. Section 7028.1 of the Business and Professions Code is amended to read:

7028.1. Any contractor who performs or engages in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, or who performs or engages in a removal or remedial action, as defined in Section 7058.7 without certification pursuant to Section 7058.7, is subject to one of the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000), and by possible revocation or suspension

SEC. 3. Section 7065.01 of the Business and Professions Code is amended to read:

7065.01. On or before May 15, 1986, the Contractors' State License Board shall develop a written test for the certification of contractors engaged in asbestos-related work. The test shall be developed according to professionally accepted psychometric principles for licensing examinations, and with the assistance of subject matter experts provided by the Division of Occupational Safety and Health, the State Department of Health Services, and subject matter experts selected from the insurance industry, registered professional engineers, asbestos workers in California, and from licensed contractors engaged in asbestos-related work.

SEC. 4. Section 7118.5 of the Business and Professions Code is amended to read:

7118.5. Any person who owns a commercial or industrial building or structure, any employer who engages in or contracts for asbestos-related work, any contractor, public agency, or any employee acting for any of the foregoing, who, either knowingly or negligently, or by reason of a failure to inquire, enters into a contract with another person who is required to be, and is not, certified pursuant to Section 7058.5 to engage in asbestos-related work, as defined in Section 6501.8 of the Labor Code, is subject to the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor's license, and a fine of not less than three thousand dollars ($3,000) or more than five thousand dollars ($5,000), or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

SEC. 5. Section 49410.7 of the Education Code is amended to read:

49410.7. (a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and bulk samples and air monitoring showing an airborne concentration of asbestos in excess of the standard .01 fibers/cc by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher. For purposes of reconstruction and rehabilitation projects approved pursuant to Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, air monitoring shall not be required to determine the need for abatement of friable asbestos or potentially friable asbestos.

(b) For purposes of air monitoring, the operating agency for each public school building in which friable asbestos-containing materials

(other than pipe and block insulation) have been identified shall monitor airborne asbestos levels in each sampling area. Each sampling area in which asbestos-containing materials have been identified shall be monitored for at least eight hours during a period of normal building activity. Analysis of samples shall be by Transmission Electron Microscopy (TEM) methods, in accordance with the Environmental Protection Agency provisional method and update, to measure the number of observable asbestos fibers. The results of this monitoring shall be recorded in terms of the number of visible fibers greater than 5 microns in length per cubic centimeter of air (f/cc) in accord with standard definitions for asbestos monitoring established by the Occupational Safety and Health Administration.

"Sampling area," as used in this section, means any area, whether contiguous or not, within a building that contains friable material that is homogenous in texture and appearance.

(c) Any public primary or secondary school building in which asbestos abatement work has been performed shall not be reoccupied until air monitoring has been conducted to show that the airborne concentration of asbestos does not exceed the air monitoring standard of subdivision (a). Not less than one month after the reoccupancy of the school building where asbestos abatement work has occurred, the building shall be remonitored to determine compliance with subdivision (b).

(d) "School building," as used in this section, means any of the following:

(1) Structures used for the instruction of public school children, including classrooms, laboratories, libraries, research facilities, and administrative facilities.

(2) School eating facilities and school kitchens.

(3) Gymnasiums or other facilities used for athletic or recreational activities or for courses in physical education.

(4) Dormitories or other living areas of residential schools.

(5) Maintenance, storage, or utility facilities essential to the operation of the facilities described in paragraphs (1) to (4).

(e) School districts and county offices of education may apply for reimbursement from the Asbestos Abatement Fund for the costs of air monitoring completed pursuant to this section.

SEC. 6. Section 66780.5 of the Government Code is amended to read:

66780.5. In addition to the other requirements of this title, the county solid waste management plan prepared pursuant to Section 66780 shall:

(a) Include in the first revision as required in Section 66780.7 an amendment delineating an enforcement program in accordance with the provisions of Chapter 3 (commencing with Section 66795), which has been reviewed by the board and the State Department of Health Services.

(b) Be reviewed, and revised, if appropriate, at least every three

Section 7028.1 of the Business and Professions Code proposed by both this bill and SB 2575. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1987, (2) each bill amends Section 7028.1 of the Business and Professions Code, and (3) this bill is enacted after SB 2575, in which case Section 7028.1 of the Business and Professions Code, as amended by SB 2575, shall remain operative only until the operative date of this bill, at which time Section 1.4 of this bill shall become operative, and Section 1.3 of this bill shall not become operative.

SEC. 16. Section 6.5 of this bill incorporates amendments to Section 66780.5 of the Government Code proposed by both this bill and AB 1809. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1987, but this bill becomes operative first, (2) each bill amends Section 66780.5 of the Government Code, and (3) this bill is enacted after AB 1809, in which case Section 66780.5 of the Government Code, as amended by Section 6 of this bill, shall remain operative only until the operative date of AB 1809, at which time Section 6.5 of this bill shall become operative.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction, and because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 18. 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 allow school districts which qualify for state funds for asbestos abatement to carry out this asbestos abatement during the December break and in order to allow the Department of Industrial Relations to review the asbestos regulations, which it is currently adopting, in accordance with this act, it is necessary that this act take effect immediately.

CHAPTER 917

An act to amend Sections 1621, 1623, 16090, 35015, 35111, 35700, 35756.5, 39617, 39802, 41002, 41341, 42120, 42122, 42125, 42126, 42127, 42239, 42600, 42601, 42602, 42610, 42810, 42840, 42842, 46013.7, 48206.3, 52321, 52501.5, 54444.2, and 56827 of, to add Section 39618.5 to, to repeal Section 46013.9 of, and to repeal and add Section 33003 of, the Education Code, to amend and renumber Section 19994.9 of the Government Code, to amend Item 6100-101-001 of Section 2.00 of the Budget Act of 1987, and to amend Section 4 of Chapter 1258 of the Statutes of 1986, relating to education.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

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

SECTION 1. Section 1621 of the Education Code is amended to read:

1621. On or before the date specified by the Superintendent of Public Instruction each year, the county board of education shall file with the Superintendent of Public Instruction a single-fund tentative budget showing all the purposes for which the county school service fund will need money.

The budget may also contain a general reserve in that sum as the county board of education may deem sufficient to meet the cash requirements of the next succeeding fiscal year until adequate proceeds of the taxes levied or apportionment of state funds are available.

The budget may also contain a designated fund balance which may be designated for any specific purpose as determined by the county board of education. Those funds shall be available for appropriation by a majority vote of the members of the county board of education.

The budget may also contain an unappropriated fund balance which shall be available for appropriation by a majority vote of the members of the county board of education to cover expenditures that have not been provided for, that have been insufficiently provided for, or for unforeseen requirements as they may arise.

The single fund tentative budget shall include estimated cash balances, estimated apportionments from the State School Fund, and an estimate of revenues from sources other than taxes on the secured roll of the equalized assessment roll of the county.

SEC. 3. Section 1623 of the Education Code is amended to read:

1623. (a) The county board of education shall hold a public hearing on the county school service fund budget. The public hearing shall be held any day on or before September 15, but at least three days following the availability of the proposed budget for public inspection. Notification of dates, times, and location, or locations at which the proposed budget may be inspected by the

and a majority of the votes cast in the entire territory in which the election is held are in favor of the reorganization, the proposal carries.

SEC. 11. Section 39617 of the Education Code is amended to read:

39617. (a) The Legislature finds and declares that the quality of protective equipment worn by participants in high school interscholastic football is a significant factor in the occurrence of injuries to such participants and that it is therefore necessary to insure minimum standards of quality for the equipment in order to prevent unnecessary injuries to such participants.

(b) No football helmets shall be worn by participants in high school interscholastic football unless the equipment has been certified for use by the National Operating Committee on Standards for Athletic Equipment or any other recognized certifying agency in the field.

This section shall not be construed as relieving school districts from the duty of maintaining football protective equipment in a safe and serviceable condition.

SEC. 11.5. Section 39618.5 is added to the Education Code, to read:

39618.5. Notwithstanding Section 39618, whenever the state funds provided pursuant to Sections 39619 and 39619.2 are insufficient to fully match the local funds deposited in the deferred maintenance fund, the governing board of each school district may transfer the excess local funds deposited in that fund to any other expenditure classifications in other funds of the district. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor.

SEC. 12. Section 39802 of the Education Code is amended to read:

39802. In order to procure the service at the lowest possible figure consistent with proper and satisfactory service, the governing board shall, whenever an expenditure of more than ten thousand dollars ($10,000) is involved, secure bids pursuant to Sections 20111 and 20112 of the Public Contract Code whenever it is contemplated that a contract may be made with a person or corporation other than a common carrier or a municipally owned transit system or a parent or guardian of the pupils to be transported. The governing board may let the contract for the service to other than the lowest bidder.

SEC. 13. Section 41002 of the Education Code is amended to read:

41002. All moneys received by any school district or paid into the county or city and county treasury to the credit of the district from state apportionments, county, district or municipal taxes, other than moneys required to be placed in a separate fund of the school district, shall be deposited in the general fund of the district, which fund shall be in existence in each county and city and county treasury.

Nothing in this section shall be construed as discontinuing, nor as affecting the disposition of moneys in any of the separate funds of the school districts legally created or established in law.

pursuant to Section 6 of Article XIII B of the California Constitution because that section is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in that section.

CHAPTER 1254

An act to amend Section 49410.7 of the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1987. Filed with Secretary of State September 27, 1987.]

I am deleting the appropriations contained in Section 3(a) and (b) of Assembly Bill 2509.

This bill would appropriate up to $100,000 from the Asbestos Abatement Fund to the Department of Industrial Relations for reinspection of school facilities. It would also make changes in eligibility requirements for schools to qualify for financial aid from the State Asbestos Abatement Fund.

Since the Federal Environmental Protection Agency is conducting the reinspectiohn of schools for presence of asbestos, the appropriation contained in this bill is not necessary.

With this deletion, I approve Assembly Bill No. 2509.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 49410.7 of the Education Code is amended to read:

49410.7. (a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and bulk samples and air monitoring showing an airborne concentration of asbestos in the school building in excess of the standard 0.01 fibers/cc by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher. For purposes of reconstruction and rehabilitation projects approved pursuant to Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, for which asbestos abatement related work

commenced on or after October 2, 1985, and for purposes of abating asbestos contained in pipe and block insulation, air monitoring shall not be required to determine the need for abatement of friable asbestos or potentially friable asbestos.

(b) For purposes of air monitoring, the operating agency for each public school building in which friable asbestos-containing materials (other than pipe and block insulation or materials to be abated during rehabilitation or reconstruction projects as specified in subdivision (a)) have been identified shall monitor airborne asbestos levels in each sampling area. Each sampling area in which asbestos-containing materials have been identified shall be monitored for at least eight hours during a period of normal building activity. Analysis of samples shall be by Transmission Electron Microscopy (TEM) methods, in accordance with the Environmental Protection Agency provisional method and update, to measure the number of observable asbestos fibers. The results of this monitoring shall be recorded in terms of the number of visible fibers greater than 1 micron in length per cubic centimeter of air (f/cc) in accord with standard definitions for asbestos monitoring established by the Occupational Safety and Health Administration.

"Sampling area," as used in this section, means any area, whether contiguous or not, within a building that contains friable material that is homogenous in texture and appearance.

(c) Any public primary or secondary school building in which asbestos abatement work has been performed shall not be reoccupied until air monitoring has been conducted to show that the airborne concentration of asbestos does not exceed the air monitoring standard of subdivision (a). Not less than one month after the reoccupancy of the school building where asbestos abatement work has occurred, the building shall be remonitored to determine compliance with subdivision (b).

(d) "School building," as used in this section, means any of the following:

(1) Structures used for the instruction of public school children, including classrooms, laboratories, libraries, research facilities, and administrative facilities.

(2) School eating facilities and school kitchens.

(3) Gymnasiums or other facilities used for athletic or recreational activities or for courses in physical education.

(4) Dormitories or other living areas of residential schools.

(5) Maintenance, storage, or utility facilities essential to the operation of the facilities described in paragraphs (1) to (4).

(e) School districts and county offices of education may apply for reimbursement from the Asbestos Abatement Fund for the costs of air monitoring completed pursuant to this section.

SEC. 2. Notwithstanding any other provisions of law to the contrary, the Department of Industrial Relations may enter into sole-source, noncompetitive contracts with individuals or firms that are certified asbestos inspectors for the purpose of reinspecting

schools pursuant to this act.

SEC. 3. (a) The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the Asbestos Abatement Fund to the Department of Industrial Relations to pay for the reinspection of school districts which were inspected by the State Department of Education in 1986. Furthermore, inspectors from, or under contract with, the California Occupational Safety and Health Division of the Department of Industrial Relations, experienced with the Asbestos-In-Schools Program, shall conduct the inspections and shall consult with officials of the United States Environmental Protection Agency, Region IX, with regard to procedures and the location of schools to be inspected. The inspectors shall only inspect those schools designated by the Environmental Protection Agency which were involved in the 1986 inspection program. If any portion of the appropriated funds remain at the conclusion of the reinspection program, they shall be returned to the Asbestos Abatement Fund.

(b) The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the Asbestos Abatement Fund to the Department of Industrial Relations to pay for the reinspection of school districts which were inspected by the State Department of Education in 1986. Funds appropriated pursuant to this subdivision shall be available for expenditure only upon the written approval of the Director of Finance based upon a determination that funds appropriated pursuant to subdivision (a) are inadequate for completion of the reinspection pursuant to this act.

(c) Funds appropriated by this section shall not be expended if federal funds for this program are received prior to that expenditure, in which case the federal funds shall be expended in lieu of these funds. If funds appropriated by this section are expended, these funds shall be replaced with federal funds to the extent that federal funds are received for these purposes.

SEC. 4. This act 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:

The State Department of Education entered into a cooperative agreement with the United States Environmental Protection Agency, Region IX, to inspect California school districts for compliance with the Asbestos-In-Schools Program (Public Law 94-469; see, 40 C.F.R. Pt. 763). The compliance inspections, conducted in 1984 and 1985, revealed that over 70 percent of the school districts had not complied properly with the Environmental Protection Agency regulation. The State Department of Education's 1986 inspection program revealed that only 12 percent of the districts inspected had not complied. Subsequently, the Environmental Protection Agency discovered a pattern of inconsistencies with the state's 1986 inspection, thus subjecting the 1986 findings to doubt. Therefore, an urgency exists to immediately reinspect those school districts which may have been improperly inspected in 1986.

CHAPTER 83

An act to amend Sections 35735, 39619, 39619.2, 41341, 41841.5, 42238.4, 42241.2, 49536, 52616, 54022, 54029, and 60246 of, to add Sections 35294.1, 39619.4, 41851.1, 42238.15, 42251, 52616.1, 52616.3, 54030, 54031, 54032, 54033, and 56712.5 to, to add and repeal Sections 14022.3 and 14022.5 of, to add Article 9 (commencing with Section 54760) to Chapter 9 of Part 29 of, to add and repeal Chapter 2 (commencing with Section 41200) of Part 24 of, the Education Code, to amend Sections 7901, 7906, 7907, 7908, and 13337 of the Government Code, and to add Section 13864 to the Government Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1989. Filed with Secretary of State June 30, 1989.]

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

SECTION 1. Section 14022.3 is added to the Education Code, to read:

14022.3. (a) For purposes of calculating "increases in enrollment" pursuant to paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution, the term "enrollment" for school districts, community college districts, and state agencies providing direct elementary and secondary level instructional services means the sum of the following:

(1) Second principal apportionment regular average daily attendance for kindergarten and grades 1 to 12, inclusive, as defined in subdivision (b) of Section 42238.5.

(2) Annual average daily attendance for county offices of education, as calculated pursuant to subdivision (c) of Section 41601.

(b) Any determination or computation of enrollment for purposes of this section shall be based upon actual data from prior years. For the next succeeding year, any determination or computation of enrollment for purposes of this section shall be the estimated enrollment, adjusted as actual data become available.

(c) This section shall remain in effect only until July 1, 1990, and as of that date is repealed, unless Senate Constitutional Amendment No. 1 is ratified by the voters at the statewide election to be held on June 5, 1990.

SEC. 2. Section 14022.5 is added to the Education Code, to read:

14022.5. (a) For purposes of Section 8.5 of Article XVI of the California Constitution, the term "enrollment" shall have the following meaning for school districts, community college districts, and state agencies providing direct elementary and secondary level instructional services:

(1) In school districts:

(A) The average daily attendance of each school district reported

district. "Salary and fringe benefits" shall be a single item of compensation and shall not be separately calculated.

The revenue limit per unit of average daily attendance for the reorganized district shall not be greater than the amount set forth in the proposal as approved by the county committee on school district organization or the State Board of Education except that the amount shall be increased pursuant to clauses (3), (4), and (5).

This section shall apply to any transfer of pupils by grade level between elementary and high school districts and, in any case, no transfer of seventh and eighth grade pupils from an elementary district to a high school district, or vice versa, shall result in the receiving district getting a revenue limit apportionment for those pupils which exceeds 105 percent of the statewide average revenue limit for the receiving district's type and size.

(b) Subdivision (a) shall not apply to any unification, consolidation, or other reorganization of school districts occurring pursuant to voter approval at an election held on or before the effective date of the act that added this subdivision, which reorganization shall be governed, instead, by the predecessor to this section as added by Chapter 1192 of the Statutes of 1980.

(c) Where the territorial jurisdiction of any school district was revised pursuant to a unification, consolidation, or other reorganization, occurring on or before July 1, 1989, that resulted in a school district having a larger territorial jurisdiction than the original school district had prior to the reorganization, and a reorganization of school districts occurs on or after the effective date of the act that added this subdivision that results in a school district having a territorial jurisdiction that is substantially the same, as determined by the State Board of Education, as the territorial jurisdiction of that original school district prior to the most recent reorganization occurring on or before July 1, 1989, the revenue limit of the school district resulting from the subsequent reorganization shall be the same, notwithstanding subdivision (a), as the revenue limit that was determined for the original school district prior to the most recent reorganization occurring on or before July 1, 1989.

SEC. 5. Section 39619 of the Education Code is amended to read:

39619. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 39618 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 39618, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public

Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4, for the prior fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 24 (commencing with Section 17780) of Part 10.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than ½ percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

SEC. 6. Section 39619.2 of the Education Code is amended to read:

39619.2. (a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 39619. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general

obligation bonds.

SEC. 7. Section 39619.4 is added to the Education Code, to read:

39619.4. Notwithstanding any other provision of law, for the 1988–89 fiscal year, school districts may transfer matching funds to the deferred maintenance fund by September 1, 1989, based on the average determined in subdivision (b) of Section 39619.

SEC. 8. Chapter 2 (commencing with Section 41200) is added to Part 24 of the Education Code, to read:

CHAPTER 2. DETERMINATION OF MINIMUM LEVEL OF EDUCATION FUNDING

41200. (a) The Legislature finds and declares that the California Constitution, as amended by "The Classroom Instructional Improvement and Accountability Act" as adopted by the voters on November 8, 1988, mandates that a specific minimum level of state General Fund revenues be guaranteed and applied for the support of school districts, community college districts, and state agencies that provide direct elementary and secondary level instructional services. The Legislature further finds and declares that, by defining certain terms used in establishing a method of calculation for determining the guaranteed minimum level of funding, Section 14022.3, 14022.5, and this chapter further the purposes of "The Classroom Instructional Improvement and Accountability Act."

(b) It is the intent of the Legislature that the annual Budget Bill, required by Section 12 of Article IV of the California Constitution, include a section that specifies the respective percentages and amounts of General Fund revenues that must be set aside and applied for the support of school districts, community college districts, and the direct elementary and secondary level instructional services of state agencies, as required by subdivision (b) of Section 8 of Article XVI of the California Constitution.

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Monies to be applied by the state," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld, impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "monies to be applied by the state."

(b) "State General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in

(matriculation), in augmentation of Item 6870-101-001 of Section 2.00 of the Budget Act of 1989 ..... $14,000,000

SEC. 37. The sum of sixteen million seven hundred thousand dollars ($16,700,000) is hereby appropriated to the Office of Criminal Justice Planning for the purposes of Section 13864 of the Penal Code.

SEC. 38. 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 implement the minimum public education funding level requirements of the Classroom Instructional Improvement and Accountability Act, as adopted by the voters on November 8, 1988, it is essential that recalculations of public school apportionments be made on or before June 30, 1989. Therefore, it is necessary that this act take immediate effect.

CHAPTER 711

An act to amend Section 39619.3 of the Education Code, relating to schools.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 39619.3 of the Education Code is amended to read:

39619.3. Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 39363, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 39619, if it meets all of the following criteria:

(a) There are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district had a fiscal emergency in any one or both of the 1987–88 and 1988–89 fiscal years.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

CHAPTER 1263

An act to amend Sections 1830, 1832, 1833, 33050, 35296, 35500, 37220, 37252, 39619.5, 42800, 44947, 46300.1, 46300.3, 48206.3, and 56827 of, and to add Sections 2557.5, 4022, 4023, 4024, and 51745.6 to, the Education Code, relating to education.

[Approved by Governor September 22, 1990. Filed with Secretary of State September 25, 1990.]

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

SECTION 1. Section 1830 of the Education Code is amended to read:

1830. (a) The county superintendent of schools may, with the approval of the county board of education, establish, conduct, and maintain facilities, for use in the elementary and secondary schools of the school districts under his jurisdiction that elect to participate in the use of the facilities, which provide for audio and visual curriculum materials, including the necessary salaries, supplies, materials, apparatus, and equipment and other necessary expenses.

(b) The county superintendent of schools shall, with the approval of the county board of education, enter into an agreement with the governing board of any school district or community college district

proficiency in basic skills pursuant to Article 2.5 (commencing with Section 51215) of Chapter 2 of Part 28.

For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade.

(b) The summer school programs shall also be offered to pupils who were enrolled in grade 12 during the prior school year after the completion of grade 12, and upon the successful completion of the summer program, these pupils may be reassessed for puposes of meeting the district's standards of proficiency.

SEC. 13. Section 39619.5 of the Education Code is amended to read:

39619.5. (a) Notwithstanding the limitations of Section 39619, the State Allocation Board may each year reserve an amount not to exceed 10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship. The apportionment shall be in addition to the apportionments made pursuant to Section 39619. Not less than one-half of all funds made available by this section shall be apportioned to school districts that had an average daily attendance, excluding summer session attendance, of less than 2,501 during the prior fiscal year.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 39619 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project.

(c) Notwithstanding subdivision (a), in any fiscal year in which the State Allocation Board has apportioned all funding from the State School Deferred Maintenance Fund for which school districts have qualified under Section 39619, the board may apportion any amount remaining in that fund for the purposes of this section.

SEC. 14. Section 42800 of the Education Code is amended to read:

42800. (a) The governing board of any school district may, with the consent of the county superintendent of schools, establish a revolving cash fund for the use of the chief accounting officer of the district, by adopting a resolution setting forth the necessity for the revolving cash fund, the officer for whom and the purposes for which

offices in support of all apportionment computations described in this chapter. The review shall be conducted on the data submitted during the initial year of apportionment and for first succeeding fiscal year only. Adjustments to any year's apportionment shall be received by the superintendent from the district or county office prior to the end of the first fiscal year following the fiscal year to be adjusted. The superintendent shall consider and adjust only the information and computational factors originally established during an eligible fiscal year, if the superintendent's review determines that they are correct.

SEC. 21. Notwithstanding any other provisions of law, for purposes of the calculation of a revenue limit for regional occupational centers and programs for the 1987–88 fiscal year, the term "annual units of average daily attendance for the 1982–83 fiscal year" in subdivision (c) of Section 52335.2 of the Education Code, as that subdivision read on July 1, 1987, shall be deemed to mean the annual units of average daily attendance for the 1981–82 base year or the annual units of average daily attendance for the 1982–83 fiscal year, whichever is less.

SEC. 22. Section 8.5 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill and SB 2605. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 33050 of the Education Code, and (3) this bill is enacted after SB 2605, in which case Section 8 of this bill shall not become operative.

SEC. 23. The amendment to Section 48206.3 of the Education Code made by Section 18 of this act, and the provision of law added by Section 21 of this act do not constitute changes in, but are declaratory of, existing law.

SEC. 24. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 1562 CHAPTERED 07/25/96

CHAPTER 277
FILED WITH SECRETARY OF STATE JULY 25, 1996
APPROVED BY GOVERNOR JULY 24, 1996
PASSED THE ASSEMBLY JULY 11, 1996
PASSED THE SENATE APRIL 25, 1996
AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or reconstruction of school facilities.

This bill would repeal and add those provisions and would make technical, nonsubstantive changes in those provisions.

of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars ($400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
CHAPTER 1. SCHOOLSITES
Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the

or persons to install and occupy a mobilehome on such site. Such person or persons, who need not be classified as employees of the district, shall, in return for being permitted to install and occupy a mobilehome on the district facility site on terms and conditions acceptable to the governing board, agree to maintain any surveillance over the facility grounds as the school district governing board requires, and to report to district authorities illegal or suspicious activities that are observed.

17575. The governing board of any school district, when leasing a building for housing of school district employees, may lease such building for any period they deem necessary.

17576. The governing board of every school district shall provide, as an integral part of each school building, or as part of at least one building of a group of separate buildings, sufficient patent flush water closets for the use of the pupils. In school districts where the water supply is inadequate, chemical water closets may be substituted for patent flush water closets by the board.

This section shall apply to all buildings existing on September 19, 1947, or constructed after such date.

17577. In addition to the other powers granted the governing board of each school district may provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property. For this purpose it may construct adequate systems or acquire adequate disposal rights in systems constructed or to be constructed by others for these purposes without regard to their proximity. The cost thereof may be paid from the building fund, including any bond moneys therein.

17578. The governing board of each district maintaining a high school shall provide for the annual cleaning, sterilizing, and necessary repair of football equipment of their respective schools pursuant to Sections 39614 and 39616.

17579. All football equipment actually worn by pupils shall be cleaned and sterilized at least once a year. Football equipment used in spring training shall be cleaned and sterilized before it is used in the succeeding fall term.

17580. Any contract with a dealer or craftsman for the repair of football equipment belonging to the district or the state college shall specifically state or describe the materials to be used by the dealer or craftsman in repairing such equipment.

17581. (a) The Legislature finds and declares that the quality of protective equipment worn by participants in high school interscholastic football is a significant factor in the occurrence of injuries to such participants and that it is therefore necessary to insure minimum standards of quality for the equipment in order to prevent unnecessary injuries to such participants.

(b) No football helmets shall be worn by participants in high school interscholastic football unless the equipment has been certified for use by the National Operating Committee on Standards for Athletic Equipment or any other recognized certifying agency in the field.

This section shall not be construed as relieving school districts from the duty of maintaining football protective equipment in a safe and serviceable condition.

17582. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine

the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 17584 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

17583. Notwithstanding Section 17582, whenever the state funds provided pursuant to Sections 17584 and 17585 are insufficient to fully match the local funds deposited in the deferred maintenance fund, the governing board of each school district may transfer the excess local funds deposited in that fund to any other expenditure classifications in other funds of the district. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor.

17584. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 17582 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 17582, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978-79 or 1979-80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of 1/2 percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4, for the prior fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds available pursuant to Chapter 13 (commencing with Section 17080) of Part 10.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than 1/2 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

17585. (a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 17584. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds.

17586. Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 17462, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 17584, if it meets all of the following criteria:

(a) There are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district had a fiscal emergency in any one or both of the 1987 -88 and 1988-89 fiscal years.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

17587. (a) Notwithstanding the limitations of Section 17584, the State Allocation Board may each year reserve an amount not to exceed 10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship. The apportionment shall be in addition to the apportionments made pursuant to Section 17584.

Not less than one-half of all funds made available by this section shall be apportioned to school districts that had an average daily attendance, excluding summer session attendance, of less than 2,501 during the prior fiscal year.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or

debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 17584 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project.

(c) Notwithstanding subdivision (a), in any fiscal year in which the State Allocation Board has apportioned all funding from the State School Deferred Maintenance Fund for which school districts have qualified under Section 17584, the board may apportion any amount remaining in that fund for the purposes of this section.

17588. As a result of the determination made in Section 17587, the State Allocation Board may do any of the following:

(a) Increase the apportionment to an eligible school district by the amount it determines necessary to complete the critical project, and require a contribution by the district.

(b) Waive repayment by the district, in whole or in part.

(c) Reduce state apportionments pursuant to Section 17584 in future years to offset the increased apportionment.

The State Allocation Board shall develop and adopt regulations for the application of subdivisions (a), (b), and (c). The regulations may give consideration to a school district's financial resources, ongoing deferred maintenance needs, and the nature of the project for which the hardship apportionment is requested.

The waiver authorized in subdivision (b) may be applied by the board to any repayment otherwise required by law, regardless of apportionment date.

17589. The State Allocation Board shall develop board policies for the apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410. The policies shall provide for the allocation of funds on a matching basis, or the board may determine, based on each application, to increase the allocation to any school district by the amount it determines is necessary to complete critical projects. In making policies pursuant to this section, the board may establish funding priorities based on a determination in each instance as to the imminence of the health hazard posed by the asbestos materials.

17590. The Asbestos Abatement Fund is hereby created, and notwithstanding Section 13340 of the Government Code, all moneys deposited in this fund are continuously appropriated to be administered by the State Allocation Board for the purpose of making allocations to school districts and county offices of education pursuant to Sections 17589 and 49410.

17591. Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over such period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

17592. From any moneys in the State School Deferred Maintenance Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

Article 2. Duties of District Clerks

17593. The clerk of each district except a district governed by a city or city and county board of education shall, under the direction of the governing board, keep the schoolhouses in repair during the time school is taught therein, and exercise a general care and supervision over the school premises and property during the vacations of the school.

Article 3. Contracts

17595. Nothing in this code shall preclude the governing board of any school district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section 14814 of the Government Code.

17596. Continuing contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired for the district, or for materials or supplies to be furnished or sold to the district may be made with an accepted vendor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies, not to exceed three years.

17597. In addition to utilizing the procedures specified in Article 14 (commencing with Section 17545) of Chapter 4, any school district or any county board of education may, by direct sale or otherwise, sell to a purchaser any electronic data processing equipment, other major items of equipment, or any relocatable building owned by, or to be owned by, the school district or county board, if the purchaser agrees to lease the equipment or building back to the school district or county for use by the school district or county following the sale.

The approval by the governing board of the school district or of the county superintendent of schools of the sale and leaseback shall be given only if the governing board of the school district or the county superintendent of schools finds, by resolution, that the equipment is data processing equipment, another major item of equipment, or a relocatable building within the meaning of this section and that the sale and leaseback is the most economical means for providing the electronic data processing equipment, other major items of equipment, or relocatable building to the school district or county. For purposes of determining the area of existing adequate school construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976, any portable relocatable classroom acquired under this section and used for classroom purposes shall be considered owned by the district.

17598. The governing board of a school district may contract for electromechanical or electronic data processing work.

17599. Nothing contained in this article shall be construed to limit the authority of any school district to contract for electromechanical or electronic data processing work to be done or related services to be performed with any other public agency pursuant to the provisions of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code or Section 11000 or 11001 of this code.

17600. The governing board of any district defined hereafter, in addition to any other authority granted by law, may employ as classified employees, in accordance with rules and regulations established by the personnel commission, any certificated employees of the district or districts during vacation periods, or on any other day or days when the certificated employee is not required to

the retrofitting of the school buildings to ensure that the project satisfies the recommendations of the preaudit.

17653. School districts taking action under this chapter shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to school districts by investor-owned or municipal utility companies or federal or state regulated financial institutions, school districts may utilize the services of these businesses.

SEC. 4. Part 10.5 (commencing with Section 17900) of the Education Code is repealed.

SEC. 5. Part 23 (commencing with Section 38000) is added to the Education Code, to read:

PART 23. SUPPLEMENTAL SERVICES

CHAPTER 1. SECURITY DEPARTMENTS

38000. (a) The governing board of any school district may establish a security department under the supervision of a chief of security or a police department under the supervision of a chief of police, as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

(b) The governing board of a school district that establishes a security department or a police department shall set minimum qualifications of employment for the chief of security or chief of police, respectively, including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the school district, whichever occurs later. This subdivision shall not be construed to require the employment by a school district of any additional personnel.

38001. Persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code.

38002. Moneys transferred into the general fund of any school district pursuant to Section 1463.12 of the Penal Code may be made available for the following purposes:

(a) The training of persons employed and compensated as members of a police department of a school district, pursuant to the requirements or approval of the Commission on Peace Officer Standards and Training.

(b) The training of persons employed and compensated as members of a police department of a school district in other public safety skills, including, but not limited to, all of the following:

(1) First aid.

(2) Rescue.

instructor certified pursuant to Section 38156 if either of those departments finds that the instructor's certificate would have been suspended, revoked, or canceled for any of the reasons designated in subdivision (e), (f), or (g).

38166. (a) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor with no instructional limitations shall conduct at least 20 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel and 10 hours of classroom training, which need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to either classroom or behind-the-wheel training only shall conduct at least 10 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel or classroom training depending on the limitation. The training need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to in-service training only shall conduct at least 10 hours of in-service training each 12 months. All school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle driver instructor training conducted by department staff may be accepted in lieu of the requirements of this subdivision.

(b) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor may be limited to classroom instruction, behind-the-wheel training or in-service training only, and prohibited from recording, documenting, or signing for any training required by this article, as determined by the department.

(c) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor shall be limited to behind-the-wheel instruction in vehicles that the instructor is qualified to drive.

(d) All school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

38167. The department may assess fees to any instructor applicant who will be training drivers of any vehicle as defined in Section 642 of the Vehicle Code. The fee shall not be more than necessary to offset the department's reasonable costs.

38168. Employers shall take all action necessary to make available to every transit busdriver required to be trained pursuant to Section 38158 or 38162 the opportunity to be trained without the loss of wages or benefits.

SEC. 6. Part 23 (commencing with Section 39001) of the Education Code is repealed.

SEC. 7. Section 53080 of the Government Code is repealed.

SEC. 8. Section 53080.1 of the Government Code is repealed.

SEC. 9. Section 53080.15 of the Government Code is repealed.

SEC. 10. Section 53080.2 of the Government Code is repealed.

SEC. 11. Section 53080.3 of the Government Code is repealed.

SEC. 12. Section 53080.4 of the Government Code is repealed.

SEC. 13. Section 53080.6 of the Government Code is repealed.

SEC. 14. Section 53081 of the Government Code is repealed.

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the **1996** calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

BILL NUMBER: AB 939 CHAPTERED 09/15/99

CHAPTER 390
FILED WITH SECRETARY OF STATE SEPTEMBER 15, 1999
APPROVED BY GOVERNOR SEPTEMBER 15, 1999
PASSED THE ASSEMBLY AUGUST 26, 1999
PASSED THE SENATE AUGUST 24, 1999
AMENDED IN SENATE AUGUST 19, 1999
AMENDED IN SENATE JUNE 28, 1999
AMENDED IN ASSEMBLY APRIL 27, 1999
AMENDED IN ASSEMBLY APRIL 7, 1999

INTRODUCED BY Assembly Member Brewer
(Coauthor: Senator Rainey)

FEBRUARY 25, 1999

An act to amend and renumber Section 39619 of, and to add Section 17584.1 to, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, Brewer. School facilities deferred maintenance.

Existing law establishes the State School Deferred Maintenance Fund which is continuously appropriated for the purposes for which it is established. Existing law requires the State Allocation Board to apportion, from the State School Deferred Maintenance Fund, a specified amount of funds to school districts on a 50% matching basis, to the extent funds are available.

This bill would require a governing board of a school district to discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing, and would require the board to report to the Legislature by March 1, in any year that the school district does not set aside prescribed funds for facility deferred maintenance, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, the State Allocation Board, and the public. By establishing these additional requirements, this bill would impose a state-mandated local program.

This bill would make a technical, nonsubstantive conforming change related to the reorganization of related provisions pursuant to Chapter 227 of the Statutes of 1996.

This bill would make technical changes to conform with AB 148 to be operative only if (1) AB 148 contains certain provisions, and (2) AB 148 is enacted and becomes effective on or before January 1, 2000.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) Because of the diminishing funds available through the excess repayments from the State School Building Aid Program, the state has been unable to fully fund the maximum amount of its contribution to the deferred maintenance fund authorized by law since the early 1980's.

(b) School districts have the expectation that state funds will be available to match the local funds they set aside to meet their deferred maintenance needs.

(c) The state's practice of not providing consistent, ongoing funding for deferred maintenance purposes has resulted in greater future facilities costs and has reduced the quality of education that can be provided to the state's 5.6 million public school pupils.

(d) If repairs to school facilities are continually deferred, school districts eventually face more expensive investments, including, but not limited to, critical repairs, major rehabilitation, or complete replacement. School districts should be discouraged from deferring maintenance projects in the short run, because inadequate ongoing maintenance reduces the useful life of facilities resulting in increased capital outlay needs, and putting more pressure on schools to access more expensive bond dollars in the long run.

(e) Approximately $2.4 billion in backlogged, unfunded deferred maintenance needs exist for K-12 schools statewide.

(f) Educational research suggests a positive relationship between pupil achievement and the condition of the facility in which pupils are schooled.

(g) It is important for school facilities to be maintained in order to provide a safe, clean, adequate environment for teachers to teach effectively and for pupils to be educated properly and to excel academically.

SEC. 2. Section 39619 of the Education Code is amended and renumbered to read:

17584. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 17582 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 17582, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978-79 or 1979-80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of 1/2 percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4, for the second prior fiscal year, exclusive of any

amounts expended for capital outlay or debt service, to the extent of funds available.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than 1/2 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4 for the second prior fiscal year, exclusive of any amounts expended for capital outlay or debt service.

SEC. 3. Section 17584.1 is added to the Education Code, to read:

17584.1. (a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside 1/2 of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard.

SEC. 3.5. Section 17584.1 is added to the Education Code, to read:

17584.1. (a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the major maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside one-half of 1 percent of its current-year revenue limit average daily attendance for major maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include

all of the following:

(1) A schedule of the complete school facilities major maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its major maintenance program and, if eligible, to participate in the state major maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities major maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purpose of this section is to inform the public regarding the local decisionmaking process relating to the major maintenance of school facilities, and to provide a foundation for local accountability in that regard.

SEC. 4. This bill and A.B. 148 both make amendments relating to funding of school facility maintenance. A.B. 148, in part, renames the State Deferred Maintenance Fund to the School Major Maintenance Match Fund and makes conforming changes relating to related local school district funds. Section 3.5 of this bill contains provisions that conform to the name change relating to the state and local funds proposed in A.B. 148, and Section 3 of this bill does not contain those conforming changes. Therefore, Section 3.5 of this bill shall become operative only if (1) A.B. 148 contains the provisions renaming the related funds, and (2) A.B. 148 is enacted and takes effect on or before January 1, 2000, in which case Section 3 shall not become operative.

SEC. 5. 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.

BILL NUMBER: SB 21 CHAPTERED 09/29/02

CHAPTER 1075
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2002
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AMENDED IN SENATE JUNE 4, 2001
AMENDED IN SENATE MAY 16, 2001
AMENDED IN SENATE APRIL 30, 2001
AMENDED IN SENATE APRIL 16, 2001
AMENDED IN SENATE FEBRUARY 13, 2001

INTRODUCED BY Senator Escutia
(Principal coauthor: Assembly Member Shelley)

DECEMBER 4, 2000

An act to amend Section 17582 of, and to add Sections 17074.27, 17074.30, and 17584.2 to, the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 21, Escutia. Lead-safe schools.

Under existing law, known as the Lead-Safe Schools Protection Act, the State Department of Health Services is required to conduct a sample survey of public elementary schools, public preschools, and public day care facilities for the purpose of developing risk factors to predict lead contamination in those public schools.

Existing law, the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, provides for the issuance, pursuant to the State General Obligation Bond Law, of state general obligation bonds in an amount not to exceed $9,200,000,000, exclusive of refunding bonds, to provide aid to school districts, county superintendents of schools, and county boards of education in accordance with prescribed provisions, including, but not limited to, the Leroy F. Greene State School Facilities Act of 1998.

This bill would authorize state modernization funding for the identification, assessment, control, management, or abatement of lead. The bill would require any application for modernization funding after January 1, 2004, to certify that it has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant standards.

The bill would authorize the use of school district deferred maintenance funds for the inspection, identification, sampling, analysis, control, management, and removal of lead-containing material.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) Despite the fact that the environmental and educational communities have known for years that lead paint still exists in school buildings in the state, many of these lead hazards have not been mitigated and continue to pose a danger to the health and well being of children.

(2) A survey of the State Department of Health Services found that, of 200 randomly selected California elementary schools, 77 percent have lead-based paint; 38 percent have lead-based paint that is deteriorating, exposing children to possible lead poisoning; 6 percent have soil lead levels greater than the Environmental Protection Agency's limit; and 18 percent have lead levels in drinking water in excess of the action level set by the Environmental Protection Agency.

(3) Lead is a highly toxic heavy metal that adversely affects virtually every organ system in the body.

(4) Most children with lead poisoning have no overt symptoms, but can suffer permanent neurological deficits and behavioral problems, including attention deficit disorder and loss of IQ points.

(5) The United States Center for Disease Control and Prevention has found that "lead poisoning remains the most common and societally devastating environmental disease of young children."

(6) Childhood lead poisoning has a significant financial cost, as lead poisoned children incur high medical and special education costs and have reduced lifetime earning potential.

(b) Therefore, it is the intent of the Legislature to encourage all public schools to identify all lead hazards as quickly as possible.

SEC. 2. Section 17074.27 is added to the Education Code, to read:

17074.27. In addition to the uses specified in Section 17074.25, a modernization apportionment may also be used for the control, management, or abatement of lead.

SEC. 3. Section 17074.30 is added to the Education Code, to read:

17074.30. Commencing with applications submitted after January 1, 2004, any school district applying for funding pursuant to this article shall certify that it has considered the potential for the presence of lead-containing materials in the modernization projects and will follow all relevant federal, state, and local standards for the management of any identified lead.

SEC. 4. Section 17582 of the Education Code is amended to read:

17582. (a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control,

management, and removal of lead-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section. The term "school building" as used in this article includes a facility that a county office of education is authorized to use pursuant to Article 3 (commencing with Section 17280) of Chapter 3.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 17584 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 5. Section 17584.2 is added to the Education Code, to read:

17584.2. At the public hearing required pursuant to Section 17584.1, the governing board of the school district shall also address the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials.

BILL NUMBER: SB 1915 CHAPTERED 09/29/02

CHAPTER 1084
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2002
APPROVED BY GOVERNOR SEPTEMBER 29, 2002
PASSED THE SENATE AUGUST 29, 2002
PASSED THE ASSEMBLY AUGUST 25, 2002
AMENDED IN ASSEMBLY AUGUST 23, 2002

INTRODUCED BY Senator Alarcon

FEBRUARY 22, 2002

An act to amend Sections 17584, 17591, and 17592.5 of the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1915, Alarcon. Deferred maintenance.

Existing law authorizes the governing board of a school district to establish a restricted deferred maintenance fund, provides for the deposit of prescribed local funds, and provides for the deposit of matching state funds.

Existing law requires the Superintendent of Public Instruction to certify whenever, in any given fiscal year, a school district has budgeted prescribed amounts in its deferred maintenance fund.

This bill would delete this requirement.

Existing law requires the State Allocation Board to apportion to school districts the state matching funds for deferred maintenance, and establishes the maximum required local deferred maintenance budget, on the basis of the school district's current-year revenue limit average daily attendance.

This bill would, instead, base those calculations upon the school district's second prior fiscal year revenue limit average daily attendance, would require the allocation to be made after December 1 of each fiscal year, and would make conforming changes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17584 of the Education Code is amended to read:

17584. (a) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of 1/2 percent of the district's second prior fiscal year revenue limit average daily attendance multiplied by the average, per unit of second prior fiscal year average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4, for the second prior fiscal year, exclusive of any amounts expended for capital outlay, debt service, or revenues that are

passed through to other local education agencies, to the extent of funds available.

(b) In order to be eligible to receive state aid pursuant to subdivision (a), no district shall be required to budget from local district funds an amount greater than 1/2 percent of the district's second prior fiscal year revenue limit average daily attendance, multiplied by the average, per unit of second prior fiscal year average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4 for the second prior fiscal year, exclusive of any amounts expended for capital outlay, debt service, or revenues that are passed through to other local educational agencies.

(c) The apportionment of funds specified in subdivision (a) shall be made by the State Allocation Board after December 1 of each fiscal year.

SEC. 2. Section 17591 of the Education Code is amended to read:

17591. Each district desiring an apportionment pursuant to Section 17584 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over that five-year period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

SEC. 3. Section 17592.5 of the Education Code is amended to read:

17592.5. The Joint Powers Southern California Regional Occupational Center and the Joint Powers Central County Occupational Center shall be deemed to be school districts for purposes of Sections 17582 to 17592, inclusive, and for the purposes of Section 17584.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 17582. District deferred maintenance fund; establishment; purpose

(a) The governing board of each school district may establish a restricted fund to be known as the "district deferred maintenance fund" for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section. The term "school building" as used in this article includes a facility that a county office of education is authorized to use pursuant to Article 3 (commencing with Section 17280) of Chapter 3.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 17584 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.2001, c. 734 (A.B.804), § 12, eff. Oct. 11, 2001.)

§ 17583. Deferred maintenance fund; transfer of excess local funds

Notwithstanding Section 17582, whenever the state funds provided pursuant to Sections 17584 and 17585 are insufficient to fully match the local funds deposited in the deferred maintenance fund, the governing board of each school district may transfer the excess local funds deposited in that fund to any other expenditure classifications in other funds of the district. A resolution providing for the transfer shall be approved by a two-thirds vote of the governing board members and filed with the county superintendent of schools and the county auditor.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17584. Certification of budgeting in deferred maintenance fund; apportionment

(a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 17582 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 17582, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of ½ percent of the district's current-year revenue limit average daily attendance multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4, for the second prior fiscal year, exclusive of any amounts expended for capital outlay, debt service, or revenues that are passed through to other local education agencies, to the extent of funds available.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than ½ percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4 for the second prior fiscal year, exclusive of any amounts expended for capital outlay, debt service, or revenues that are passed through to other local educational agencies.

(Formerly § 39619, added by Stats.1979, c. 282, p. 982, § 19, eff. July 24, 1979, operative July 1, 1980. Amended by Stats.1980, c. 40, p. 103, § 3, eff. March 14, 1980; Stats.1980, c. 1354, p. 4859, § 37.3, eff. Sept. 30, 1980; Stats.1981, c. 649, p. 2426, § 5; Stats.1981, c. 1093, p. 4208, § 3; Stats.1982, c. 525, p. 2454, § 1; Stats.1983, c. 753, § 1; Stats.1989, c. 82, § 5, eff. June 30, 1989; Stats.1989, c. 83, § 5, eff. June 30, 1989; Stats.1996, c. 1158 (A.B.2964), § 5, eff. Sept. 30, 1996; Stats.1997, c. 825 (A.B.287), § 10, eff. Oct. 9, 1997. Renumbered § 17584 and amended by Stats.1999, c. 390 (A.B.939), § 2. Amended by Stats.2001, c. 734 (A.B.804), § 13, eff. Oct. 11, 2001.)

§ 17584.1. Deferred maintenance of school district facilities; fund set aside; report; copies; purpose

(a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard.

(Added by Stats.1999, c. 390 (A.B.939), § 3.)

§ 17584.2. Public hearing; requirement that governing board of school district address use of deferred maintenance funds for detection, control, management, and removal of lead-containing materials

At the public hearing required pursuant to Section 17584.1, the governing board of the school district shall also address the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials.

(Added by Stats.2002, c. 1075 (S.B.21), § 5.)

§ 17585. Applications for deferred maintenance funding; eligibility for additional apportionment

(a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 17584. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total general funds and adult education funds budgeted by districts of similar size and type, as defined in Section 42238.4 for the prior fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17586. Eligibility to receive apportionment from state school deferred maintenance fund notwithstanding limitations imposed by state allocation board

Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 17462, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 17584, if it meets all of the following criteria:

(a) There are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district had a fiscal emergency in any one or both of the 1987 –88 and 1988–89 fiscal years.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17587. Extreme hardship; criteria; additional apportionment

(a) Notwithstanding the limitations of Section 17584, the State Allocation Board may each year reserve an amount not to exceed 10 percent of the funds transferred from any source to the State School Deferred Maintenance Fund for apportionments to school districts, in instances of extreme hardship. The apportionment shall be in addition to the apportionments made pursuant to Section 17584. Not less than one-half of all funds made available by this section shall be apportioned to school districts that had an average daily attendance, excluding summer session attendance, of less than 2,501 during the prior fiscal year.

An extreme hardship shall exist in a school district when the State Allocation Board determines the existence of all of the following:

(1) That the district has deposited in its deferred maintenance fund an amount equal to at least 0.5 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(2) That the district has a critical project on its five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(3) That the total funds deposited by the district and the state pursuant to Section 17584 are insufficient to complete the project.

(b) As a result of the determination made in subdivision (a), the State Allocation Board may increase the apportionment to a school district by the amount it determines necessary to complete the critical project.

(c) Notwithstanding subdivision (a), in any fiscal year in which the State Allocation Board has apportioned all funding from the State School Deferred Maintenance Fund for which school districts have qualified under Section 17584, the board may apportion any amount remaining in that fund for the purposes of this section.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17588. Apportionment increases and reductions; repayment waivers

As a result of the determination made in Section 17587, the State Allocation Board may do any of the following:

(a) Increase the apportionment to an eligible school district by the amount it determines necessary to complete the critical project, and require a contribution by the district.

(b) Waive repayment by the district, in whole or in part.

(c) Reduce state apportionments pursuant to Section 17584 in future years to offset the increased apportionment.

The State Allocation Board shall develop and adopt regulations for the application of subdivisions (a), (b), and (c). The regulations may give consideration to a school district's financial resources, ongoing deferred maintenance needs, and the nature of the project for which the hardship apportionment is requested.

The waiver authorized in subdivision (b) may be applied by the board to any repayment otherwise required by law, regardless of apportionment date.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17589. Asbestos materials containment or removal; policies for apportionment of funds

The State Allocation Board shall develop board policies for the apportionment of funds appropriated for the containment or removal of asbestos materials in schools pursuant to Section 49410. The policies shall provide for the allocation of funds on a matching basis, or the board may determine, based on each application, to increase the allocation to any school district by the amount it determines is necessary to complete critical projects. In making policies pursuant to this section, the board may establish funding priorities based on a determination in each instance as to the imminence of the health hazard posed by the asbestos materials.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17590. Asbestos abatement fund; creation; purpose

The Asbestos Abatement Fund is hereby created, and notwithstanding Section 13340 of the Government Code, all moneys deposited in this fund are continuously appropriated to be administered by the State Allocation Board for the purpose of making allocations to school districts and county offices of education pursuant to Sections 17589 and 49410.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17591. Plan of maintenance needs; filing; approval; conformance

Each district desiring an apportionment pursuant to Section 39619 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over that five-year period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.1998, c. 485 (2803), § 47.)

§ 17592. Funds for assistance under the local agency allocation law

From any moneys in the State School Deferred Maintenance Fund, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 49410. Asbestos materials containment or removal; legislative findings; definitions

(a) The Legislature finds that:

(1) There is substantial scientific and medical evidence that human exposure to asbestos fibers significantly increases the likelihood of contracting cancer and other debilitating or fatal diseases such as asbestosis.

(2) Medical and epidemiological evidence suggests that children exposed to asbestos fibers may be especially susceptible to the environmentally induced diseases associated with the exposure.

(3) Substantial amounts of asbestos materials were used in school construction during the period from 1946 through 1973 for fireproofing, soundproofing, decoration, and other purposes.

(4) When these materials age, deteriorate, or become damaged or friable, they release asbestos fibers into the ambient air. This can result in the exposure of school children and school employees to potentially dangerous levels of asbestos fibers.

(5) The presence of asbestos in the air in concentrations far exceeding the normal ambient levels has been found in schools, especially where the asbestos materials have reached a damaged, deteriorated, or disturbed state as a result of abuse, abrasion, water leakage, or forced air circulation.

(6) In view of the fact that the State of California has compulsory attendance laws for children of school age, and these children must be educated in a safe and healthy environment, the hazard presented by asbestos materials in the schools is of special concern to the Legislature.

(b) As a result of the findings in subdivision (a), it is the intent of the Legislature to provide for the safe and expeditious containment or removal of asbestos materials posing a hazard to health in schools.

(c) As used in this section and Sections 49410.2 and 49410.5, the following terms have the following meanings:

(1) "Asbestos" means naturally occurring hydrated mineral silicates separable into commercially used fibers: specifically chrysotile, amosite, crocidolite, tremolite, anthrophyllite, and actinolite.

(2) "Asbestos materials" means materials formed by mixing asbestos fibers with other products, including, but not limited to, rock wool, plaster, cellulose, clay, vermiculite, perlite, and a variety of adhesives. Some of these materials may be sprayed on surfaces or applied to surfaces in the form of plaster or a textured paint.

(3) "Hazard to health" means that the asbestos material is loose, friable, flaking, or dusting, or is likely to become so within the service life of the material in place.

(Added by Stats.1984, c. 1751, § 7, eff. Sept. 30, 1984.)

§ 49410.2. Asbestos materials containment or removal; application for funds

School districts and county offices of education may apply to the State Allocation Board pursuant to Section 39619.6 for funds for the purposes of containment or removal of asbestos materials posing a hazard to health.

(Added by Stats.1984, c. 1751, § 8, eff. Sept. 30, 1984.)

§ 49410.5. Asbestos control; data collection; compliance with guidelines

(a) The State Allocation Board shall retain all information provided by school districts making application for funds pursuant to Sections 39619.6, 39619.7, and 39619.8 regarding the actual or estimated cost of inspection and testing for, and encapsulation or removal of, asbestos.

(b) The Legislature finds and declares that:

(1) Federal moneys may be made available to reimburse schools for costs related to asbestos inspection, testing, encapsulation, and removal, and that the distribution of these moneys will be expedited by the early collection of these data.

(2) School districts shall comply with guidelines suggested by the Environmental Protection Agency for the purposes of inspection and testing for asbestos materials, and for the protection and safety of workers and all other individuals during the encapsulation and removal of asbestos.

(Added by Stats.1984, c. 1751, § 9, eff. Sept. 30, 1984.)

§ 49410.7. Friable or potentially friable asbestos; determination of need for removal; monitoring airborne asbestos levels

(a) For purposes of funding pursuant to Section 39619.9, the factors determining the need for abatement of friable asbestos or potentially friable asbestos shall include, but not be limited to, visual inspection and bulk samples and air monitoring showing an airborne concentration of asbestos in the school building in excess of the standard 0.01 fibers/cc by Transmission Electron Microscopy (TEM) monitoring, as specified in subdivision (b), or the concurrently measured concentration of asbestos in the ambient air immediately adjacent to the building, whichever is higher. For purposes of reconstruction and rehabilitation projects approved pursuant to Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, for which asbestos abatement related work commenced on or after October 2, 1985, and for purposes of abating asbestos contained in pipe and block insulation, air monitoring shall not be required to determine the need for abatement of friable asbestos or potentially friable asbestos.

(b) For purposes of air monitoring, the operating agency for each public school building in which friable asbestos-containing materials (other than pipe and block insulation or materials to be abated during rehabilitation or reconstruction projects as specified in subdivision (a)) have been identified shall monitor airborne asbestos levels in each sampling area. Each sampling area in which asbestos-containing materials have been identified shall be monitored for at least eight hours during a period of normal building activity. Analysis of samples shall be by Transmission Electron Microscopy (TEM) methods, in accordance with the Environmental Protection Agency provisional method and update, to measure the number of observable asbestos fibers. The results of this monitoring shall be recorded in terms of the number of visible fibers greater than 1 micron in length per cubic centimeter of air (f/cc) in accord with standard definitions for asbestos monitoring established by the Occupational Safety and Health Administration.

"Sampling area," as used in this section, means any area, whether contiguous or not, within a building that contains friable material that is homogenous in texture and appearance.

(c) Any public primary or secondary school building in which asbestos abatement work has been performed shall not be reoccupied until air monitoring has been conducted to show that the airborne concentration of asbestos does not exceed the air monitoring standard of subdivision (a). Not less than one month after the reoccupancy of the school building where asbestos abatement work has occurred, the building shall be remonitored to determine compliance with subdivision (b).

(d) "School building," as used in this section, means any of the following:

(1) Structures used for the instruction of public school children, including classrooms, laboratories, libraries, research facilities, and administrative facilities.

(2) School eating facilities and school kitchens.

(3) Gymnasiums or other facilities used for athletic or recreational activities or for courses in physical education.

(4) Dormitories or other living areas of residential schools.

(5) Maintenance, storage, or utility facilities essential to the operation of the facilities described in paragraphs (1) to (4).

(e) School districts and county offices of education may apply for reimbursement from the Asbestos Abatement Fund for the costs of air monitoring completed pursuant to this section.

(Added by Stats.1985, c. 1587, § 6, eff. Oct. 2, 1985. Amended by Stats.1986, c. 1451, § 5, eff. Sept. 30, 1986; Stats.1987, c. 1254, § 1, eff. Sept. 27, 1987.)

EXHIBIT 4
COPIES OF REGULATIONS CITED

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 12. State School Deferred Maintenance

Article 1. Definitions

Section 1866. Definitions.

(a) In connection with the administration of the provisions of California Education Code (EC) Sections 17582 through 17588 and 17591 through 17592.5, inclusive, of Article 1, Chapter 4, Part 10.5, Division 1, Title 1, and for the purpose of these regulations, the terms set forth below shall have the following meanings:
"The Act" means EC Sections 17582 through 17588 and 17591 through 17592.5, above.
"Board" means the State Allocation Board.
"Complete Application" means a district has submitted with the application, all documents to the Office of Public School Construction (OPSC) that are required as identified in the General Information Section of the *Extreme Hardship Funding Application,* Form SAB 40-22 (New 04/02) and the OPSC has accepted and completed a preliminary approval review.
"Critical Project" shall have the meaning set forth in Section 1866.5.
"Deferred Maintenance" means the repair or replacement work performed on school facility components that is not performed on an annual or on-going basis but planned for the future and part of the *Five Year Plan,* Form SAB 40-20 (New 04/02).
"District or Applicant School District" shall mean an entity identified in Section 1866.1(a).
"Division of the State Architect" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety, and access compliance.
"Extreme Hardship Grant" means a grant provided by the State to complete the critical project, as provided by EC Section 17587 and Regulation Section 1866.5.2.
"Financial Test" shall have the meaning set forth in Section 1866.5(a).
"Five Year Plan" shall have the meaning set forth in Section 1866.4.
"Matching Funds" means an amount of funds the district deposits into the "district deferred maintenance fund" to receive either a maximum or prorated basic grant.
"Maximum Basic Grant" means an amount of State funds apportioned by the Board for purposes of the *Five Year Plan,* Form SAB 40-20 (New 04/02). This amount is based on the formula specified in EC Section 17584(b).
"Prorated Basic Grant" means the prorated amount of the maximum basic grant apportioned by the Board due to insufficient funding for the Deferred Maintenance Program (DMP).
"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the DMP.
"OPSC Deferred Maintenance Extreme Hardship Workload List" means a list of extreme hardship funding applications authorized by EC Section 17587 for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of the *Extreme Hardship Funding Application,* Form SAB 40-22 (New 04/02) but not yet included on the DMP Extreme Hardship Unfunded List.
"OPSC Extreme Hardship Unfunded List" means a information list of unfunded critical projects awaiting an Extreme Hardship Grant under the provisions of the DMP.
"OPSC Modernization Workload List" means a list of School Facility Program (SFP) modernization projects for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Form SAB 50-01, *Enrollment Certification/Project,* (Revised ~~07/01~~ 09/02); Form SAB 50-02, *Existing School Building Capacity,* (Revised ~~07/01~~ 09/02); Form SAB 50-03, *Eligibility Determination,* (Revised ~~07/01~~ 09/02); and Form SAB 50-04, *Application for Funding,* (Revised ~~09/01~~ 09/02), under the SFP.
"Repair" means the work necessary to restore deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be

approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes.
"Replacement" means the work necessary to replace those school building systems itemized in "Repair" above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.
"Routine Maintenance" means the school facility component work performed on an annual or on-going basis each year to keep building facilities in proper operating condition.
"School Facility Program (SFP)" means the Leroy F. Green School Facilities Act of 1998.
"SFP Modernization Unfunded List" means an information list of unfunded modernization projects approved under the provisions of the SFP.
"Total Estimated Cost" means an estimated cost of the critical project on which the extreme hardship grant is calculated.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582-17592.5, Education Code.

Article 2. Eligibility to Receive DMP Grants

Section 1866.1. Prerequisites to Receiving a Basic or Extreme Hardship Grant.

The prerequisites to receiving a grant, as provided by the Act and these regulations, include the following:
(a) Operate as one of the following:
(1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or
(2) A County Superintendent of Schools (CSS) that serves any combination of kindergarten through twelfth grade pupils; or
(3) A regional occupational center identified in EC Section 17592.5; and
(b) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in EC Section 17582(a) and these regulations; and
(c) That the applicant school district has a Board approved *Five Year Plan,* Form SAB 40-20 (New 04/02) complying with Section 1866.4, which includes the fiscal year of funding.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17584, 17587, 17591, 17592.5, Education Code.

Article 3. DMP Application Procedure

Section 1866.2. DMP Application for Basic Grant.

An eligible district seeking funding for a DMP Basic Grant shall complete and file with the OPSC, the *Five Year Plan,* Form SAB 40-20 (New 04/02), which is incorporated by reference.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17591, Education Code.

Section 1866.3. DMP Application for Extreme Hardship Grant.

An eligible district seeking funding for a DMP extreme hardship grant shall complete and file with the OPSC, the *Extreme Hardship Funding Application,* Form SAB 40-22 (New 04/02), which is incorporated by reference.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Article 4. Basic Grant Request and Apportionment

Section 1866.4. Five Year Plan Requirements.

EC Section 17591 establishes the need of filing with the Board a five year plan for deferred maintenance needs of the district. The *Five Year Plan*, Form SAB 40-20, (New 04/02) is a summary of proposed projects the district plans on completing annually over the next five fiscal years using the basic grant. The fiscal year the plan commences is determined by the fiscal year in which it was filed. New and revised plans are accepted on a continuous basis for the current fiscal year up to the last working day in June. Revisions are not accepted for prior fiscal years.

(a) Under the following circumstances, a revised plan would need to be submitted to the OPSC:
(1) The plan has expired.
(2) Work will be performed that is not listed on the plan or at a school not listed on the plan.
(3) If work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.
(b) A district submitting a new plan or revising a plan under (a) above must be able to certify that the plans and proposals for expenditures of funds, listed on the *Five Year Plan,* Form SAB 40-20 (New 04/02) submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to EC Section 17584.1(a).

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17584.1, 17591, Education Code.

Section 1866.4.1. Permissible Use of the DMP Basic Grant.

The district may include on its *Five Year Plan,* Form SAB 40-20 (New 04/02) a repair or replacement project, provided it meets all the following criteria:
(a) Conforms to the deferred maintenance activities authorized in EC Section 17582(a) or these regulations, which has approached or exceeded its normal life expectancy or has a history of continued repairs indicating a shortened life expectancy, and;
(b) Performed at a district owned facility, which is used for school purposes. A district that is currently leasing relocatables from the State Relocatable Classroom Program may include deferred maintenance work on the *Five Year Plan,* Form SAB 40-20 (New 04/02) for these facilities.
(c) Facilities owned by a CSS or leased facilities that are required to be maintained by the CSS, which it is authorized to use pursuant to Article 3 commencing with EC Section 17280, Chapter 3, may be included on the *Five Year Plan,* Form SAB 40-20 (New 04/02).

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17280, 17582 and 17591, Education Code.

Section 1866.4.2. Calculation of Basic Grant and Apportionment of Basic Grant.

After July 1 each fiscal year, the Board shall apportion to districts a basic grant for the DMP. A maximum basic grant is calculated as stated for each of the following:
(a) School districts and regional occupational centers using the formula set forth in EC Section 17584(b).
(b) CSSs who meet the provisions of EC Sections 17584, 17591 and, if applicable, 17585, an amount equal to one dollar ($1.00) for each one dollar ($1.00) of local funds up to a maximum of one-half percent of the total general funds and adult education funds budgeted by the CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, debt service or revenues that are passed through to other local educational agencies, to the extent of funds legally available pursuant to EC Section 17080.

If sufficient State funding is not available, the Board shall apportion to all districts except those that are receiving a basic grant with an extreme hardship grant, a prorated amount of the maximum. This amount is known as the prorated basic grant.

Includes OAL approval and Secretary of State filing of 01/13/2003

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 2553 and 17584, Education Code.

Section 1866.4.3. District Deposit of Matching Share.

To receive the basic grant pursuant to Section 1866.4.2, districts are required to deposit a matching share into their District Deferred Maintenance Fund established pursuant to EC Section 17582(a). The State will match this amount dollar-for-dollar not to exceed the basic grant apportioned by the Board. The district's deposit must be a cash contribution from any non-restricted fund, unmatched carryover pursuant to Section 1866.4.4, or from the district's restricted Ongoing and Major Maintenance Account.

If the district has established an Ongoing and Major Maintenance Account under the provisions of EC Section 17070.75(b)(1), any annual deposits in excess of 2 ½ percent into that fund may be used towards the district's matching share. Districts may either:

(a) Report the excess amount in the Ongoing and Major Maintenance Account being used towards the match on the *Certification of Deposits,* Form SAB 40-21 (New 04/02), which is incorporated by reference. These funds are not available for eligible deferred maintenance projects listed on the *Five Year Plan,* Form SAB 40-20 (New 04/02), until transferred into the District Deferred Maintenance Fund.

(b) Transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share on the *Certification of Deposits,* Form SAB 40-21 (New 04/02). These funds are available to the district to perform work on the *Five Year Plan,* Form SAB 40-20 (New 04/02).

Note: Authority cited: Section 15503, Government Code

Reference: Sections 17070.75, 17582, and 17584, Education Code.

Section 1866.4.4. Carryover of Unmatched State Funds.

Any funds deposited and not matched by the State can be carried over to the next fiscal year. A district can apply unexpended, unmatched balances past the next fiscal year under the provisions of EC Section 17583, and then reaffirm by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes.

Carryover that has been reported on the *Certification of Deposits*, Form SAB 40-21 (New 04/02) is considered matched and therefore cannot be applied as carryover in subsequent fiscal years.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582 and 17583, Education Code.

Section 1866.4.5. County Superintendents of Schools Funding Limitations.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 2553, 39618-39619.2 and 39620, Education Code; and Sections 15502-15503, Government Code.

Section 1866.4.6. Release of State Funds.

The CSSs shall report the district's deposit on the *Certification of Deposits*, Form SAB 40-21 (New 04/02). The Form is due to the OPSC no later than 60 days after the maximum or prorated basic grant is apportioned by the Board. Any *Certification of Deposits*, Form SAB 40-21 (New 04/02), received after 60 days will be brought to the Board on a case-by-case basis to determine if the funds will be released.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17584, Education Code.

Section 1866.4.7. Failure to Deposit Matching Funds.

A total deposit less than the maximum amount will require the district to comply with the reporting requirements of EC Section 17584.1. The OPSC will present to the Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17584 and 17584.1, Education Code.

Article 5. Extreme Hardship Grant Application and Apportionment

Section 1866.5. Eligibility Requirements.

A district may be eligible for an extreme hardship grant, provided the district demonstrates to the Board that there is a critical project on the *Five Year Plan,* Form SAB 40-20 (New 04/02), which meets all the following criteria:

(a) Financial Test

(1) The total estimated cost of the critical project is greater than two times the district's maximum basic grant.

(b) Health and Safety Test

(1) The project if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

An extreme hardship grant is available to repair or replace an existing school building component, authorized by EC Section 17582 or these regulations, located within existing district owned classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space located on a school site), if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17587, and 17588, Education Code.

Section 1866.5.1. Application Submittals.

(a) For the OPSC to deem an application complete, a district requesting an extreme hardship grant shall submit to the OPSC an *Extreme Hardship Funding Application,* Form SAB 40-22 (New 04/02), along with all documents requested in the General Information Section of the Form. Additional documentation identifying how the request meets the requirements of EC Section 17587 may be required.

(b) More than one *Extreme Hardship Funding Application,* Form SAB 40-22 (New 04/02), may be submitted by a district in a fiscal year provided each project meets the eligibility requirements set forth in Section 1866.5. The OPSC will present projects to the Board in the order of date received. Complete applications are accepted on a continuous basis; those received prior to the last working day in June are ensured consideration for funding by the Board in the next funding cycle.

(c) The district shall submit a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the *Extreme Hardship Funding Application,* Form SAB 40-22 (New 04/02). If the extreme hardship grant request contains work on relocatable facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility. The Board will approve reasonable and appropriate funds to mitigate the conditions, which makes the project qualify as a hardship under EC Section 17587, if the costs are consistent with the Saylor Current Construction Costs.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.2. Determination of Extreme Hardship Grant Amount and District Contribution.

(a) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum Basic Grant and State matching share that is less than $1,000,000, shall be determined by either of the following:
(1) For a total project cost that is less than $1,000,000, the extreme hardship grant will be determined by taking the total project cost less the district's maximum basic grant, less the State's matching share.
(2) For a total project cost that exceeds $1,000,000, the extreme hardship grant will be determined by taking $1,000,000 less the district's maximum basic grant, less the State's matching share. The total of that amount plus 50 percent of any project costs above $1,000,000 will be the State's hardship contribution. The district's contribution will be 50 percent of the remaining excess above $1,000,000 and the district's maximum basic grant.
(b) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum basic grant and State matching share that exceeds $1,000,000, shall be determined by the following:
(1) From the total project cost deduct the district's maximum Basic Grant and State matching share. The remaining amount will be divided in half between the district and the State.
The district shall be required to contribute the maximum basic grant and State's matching share at the time the Board apportions funding for the project.
(c) An extreme hardship grant for each additional hardship project beyond one in any given fiscal year shall be determined by dividing the total project cost in half. A cash contribution of 50 percent will be required from the district.
(d) A district with only one school may include other major repair or replacement work deemed essential for basic utilization and functioning of the school, without being subject to subsection (c).

If a district receives an unfunded approval pursuant to Section 1866.5.3, the extreme hardship grant will be an estimate based on the current maximum basic grant and state matching share and will be re-calculated using the maximum basic grant and state matching share at the time of funding by the Board.

Note: Authority cited: Section 15503, Government Code and Section 17588, Education Code.

Reference: Sections 17587 and 17588, Education Code.

Section 1866.5.3. Project Priorities Due to Insufficient State Funds.

(a) When funds are not available, project requests that meet the criteria for funding are presented to the Board on a continuous basis throughout the fiscal year and are included on an unfunded list based on the date the complete critical hardship application was received by the OPSC.
(b) The Board shall utilize the following prioritized list to apportion extreme hardship grants for critical projects when funds become available:

Priority Description	Priority No.
A project that meets the requirements of (c) below.	1
All other eligible projects as defined in EC Section 17582(a) or these regulations.	2

(c) At the time the complete application is filed with the OPSC, a district requesting Priority One status shall submit a resolution passed by the district's governing board that includes the following:
(1) Describe in detail the health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.
(2) Identify the facility or facilities on the school site that will be affected by the closure and the dates of closure.
(3) Identify how the board plans on housing the pupils until the facility can be re-opened.
An assessment will be made by the OPSC and the Board to determine if the critical project meets the Priority One requirements.
(d) When funds become available, the requests included on the OPSC Extreme Hardship Unfunded List will receive funding in the following order, provided the project still meets Section 1866.5(a):
(1) Increases, if the original request has already received an apportionment.
(2) Priority One Projects.
(3) All other eligible projects as defined in EC Section 17582(a) or these regulations.
Within each category, projects will be funded in the order the project was placed on the unfunded list. Projects that do not receive funding will remain on the unfunded list for a future funding cycle.

(e) The Board may make exceptions to the priorities on a case-by-case basis for the benefit of the pupils affected.
(f) The Board shall maintain a sufficient reserve for unexpected emergencies and on-going cost increases.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17587 and 17588, Education Code.

Section 1866.5.4. Reimbursement.

(a) Reimbursement of eligible architect/engineering expenditures will be allowed up to five months prior to the date that the hardship project is accepted for processing by the OPSC.
(b) After written determination by the OPSC that the project is approvable, reimbursement of eligible construction expenditures will be allowed. If a district incurs construction costs prior to that date, all construction expenditures for the project will not be reimbursed.
(c) In the case where a project meets the criteria of priority one hardship pursuant to Section 1866.5.3(c), districts can contact the OPSC to request an expedited determination of the eligibility of the hardship project. The OPSC will respond within five working days. If OPSC does not respond within five working days, the project will be deemed approvable for eligible construction expenditures.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.5. Permissible Uses of Extreme Hardship Grant Funds.

The extreme hardship grant shall be used for the critical project approved by the Board and only expenditures relating to the minimum work necessary to mitigate the problem shall be recognized as eligible project costs. Architect or engineer's fees up to 12 percent of the construction costs will be deemed eligible as well as reasonable testing, inspection, and plan checking fees. The grant may not be used for any of the following:
(a) Construction costs incurred prior to the OPSC determining that the project is approvable, except for costs associated with temporary measures necessary to immediately mitigate the problem.
(b) Expenditures required by local mandate that are not prescribed in State law.
(c) Asbestos abatement, sampling, testing necessary as a result of a SFP modernization project or a Federal Renovation Program project.
(d) Non-owned facilities.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.6. Ongoing Project Cost Increase.

A district may request an increase in funding for ongoing project costs under either one of the following conditions:
(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. The OPSC may request that the project be re-bid prior to processing the increase for funding.
(b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.
Any Board approved increase to the extreme hardship grant will be subject to the requirements of Section 1866.5.2.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17587 and 17588, Education Code.

Section 1866.5.7. Release of State Funds.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal by the district of the *Fund Release Authorization,* Form SAB 40-23 (New 04/02), which is incorporated by reference, and supporting

documentation requested in the General Instruction Section of the form. A district must submit the *Fund Release Authorization*, Form SAB 40-23 (New 04/02), within one year of the apportionment of the extreme hardship grant for the project. After reviewing the submittal, the OPSC may request to the Board, based on the supporting documentation, that the extreme hardship grant be adjusted to reflect the actual project costs.

Should the district only provide documentation to support the release of funding for a portion of the project, the OPSC shall prorate the fund release based on the supporting documentation.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.8. Progress Report and Time Limit on Extreme Hardship Grant Apportionment.

Within one year of the extreme hardship grant apportionment by the Board the district shall:
(a) Complete the critical project; and
(b) Submit the *Fund Release Authorization*, Form SAB 40-23 (New 04/02) and supporting documentation pursuant to Section 1866.5.7.
(c) If (b) above has not been met within six months of Board apportionment, the district is required to submit a progress report in the form of a narrative to the OPSC. The report shall contain a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, the entire extreme hardship grant shall be presented to the Board for rescission and, if applicable, the portion of the Basic Grant the district received due to the extreme hardship grant funding unless the district submits a request for time extension.
(d) The Board may approve a time extension for the project based on the following:
(1) A provision for a six-month time extension if the district has completed the plans and they have been submitted to the DSA for approval.
(2) A provision for a six-month time extension when the plans are DSA approved and the project is currently out to bid.
(3) A provision for up to a nine-month time extension when the district can demonstrate to the Board that circumstances exists beyond the district's control.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17587 and 17588, Education Code.

Section 1866.5.9. Exemptions to District Contribution.

Monitoring costs required by a public agency relating to the removal of an underground toxic tank that cannot be funded by any other source, shall be exempted from a project's total cost for the purpose of determining the district contribution as required in Section 1866.5.2(a)(2) or (b)(1).

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.6. Method of Payment to School District.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 39618-39621, Education Code.

Article 6. Miscellaneous

Section 1866.7. Control of Expenditures.

EC Section 17582(c) provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no

funds deposited in the district deferred maintenance fund pursuant to EC Section 17584(a) or (b) may be expended by the governing board for any purpose except those specified in EC Section 17582(a).

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17582, Education Code.

Section 1866.8. Expenditures by Districts Subject to Public Contract Code.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in EC Sections 17582 and 17587 must comply with all laws, specifically the Public Contract Code (PCC) and the California Code of Regulations (Title 24). An "emergency" contract must be awarded under the provisions of the PCC Section 20113.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17584, and 17587, Education Code.

Section 1866.9. Program Reporting Requirements.

A district receiving funds in accordance with Section 1866.5.2 shall submit an expenditure report from the district on the *Expenditure Report,* Form SAB 40-24 (New 04/02), which is incorporated by reference. The expenditure report shall be due no later than two years from the date any funds were released.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.9.1. Expenditure Audit.

When the district has received funds pursuant to Section 1866.5.2, the project will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of EC Section 17582(a), 17587, and Section 1866.5.5.

When the OPSC receives the final expenditure report from the district on the *Expenditure Report*, Form SAB 40-24 (New 04/02), an audit of the expenditures by the OPSC shall commence within one year of the report for all extreme hardship grant apportionments made by the Board after these regulations become effective. The OPSC shall complete the audit within six months, unless additional information requested by the district has not been received.

The district shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582-17592.5, Education Code.

Section 1866.11. Payment and Performance Bonds.

Includes OAL approval and Secretary of State filing of 01/13/2003

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 39618-39621, Education Code.

Section 1866.12. Earned Interest on DMP Grants.

Earned interest on State funds received in accordance with the Act shall be treated as follows:

(a) One half of any interest earned on DMP grant funds provided pursuant to Section 1866.4.2 may be applied towards the district match in any given fiscal year.

(b) All interest earned on DMP grant funds provided pursuant to Section 1866.5 shall be applied to eligible project costs for the project pursuant to Section 1866.5.5 or returned to the State.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17584, and 17587, Education Code.

Section 1866.13. Duplication of Applications.

If the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization project must be withdrawn prior to the release of any extreme hardship grants to the district.

If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's *Five Year Plan*, Form SAB 40-20, (New 04/02) pursuant to Education Code Section 17591, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17587 and 17591, Education Code.

Section 1866.14. Amending and Withdrawal of Extreme Hardship Funding Applications.

The district may not amend an *Extreme Hardship Funding Application,* Form SAB 40-22, (New 04/02) submitted to the OPSC that has not received Board approval to increase the scope of work. At the option of the district, the funding application may be withdrawn and resubmitted to include the additional work. The district must request that the application be withdrawn and removed from the OPSC Deferred Maintenance Extreme Hardship Workload List. The resubmitted application will receive a new processing date by the OPSC.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Title 2, cont.

§1867.2. Matching Funds.
Note • History

(a) The State Allocation Board will fund 50% of each eligible district's abatement projects. The state Allocation Board may increase the apportionment to a district, upon request, if the required district contribution shown below in excess of 1/2 of 1% of the district's budgeted General Fund and Adult Education Fund, less capital outlay and debt service.

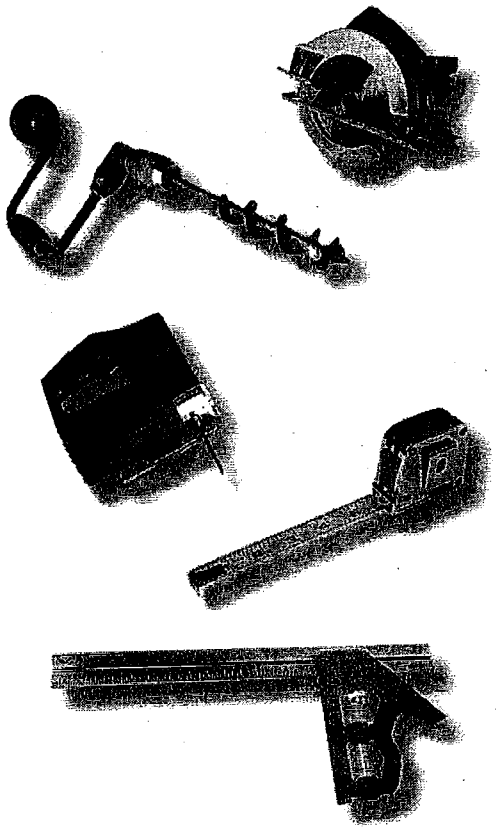
Required A.D.A.	District Contribution
4,499 or less	25% of project cost
4,500 or more	50% of project cost

In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund the lesser of the 1/2 of 1% figure each year for a period of five years or the full percentage of the required district contribution. Installment payments will cease at the time the required district contribution is attained or at the end of five years, whichever occurs first.
(b) Funds may be apportioned on estimated project cost, however, any savings realized after the project is completed will revert to the State Asbestos Abatement Fund. A district certification of project completion must be submitted to OAL within 30 days of completion.
NOTE

Authority cited: Section 15503, Government Code; and Sections 16009 and 39619.6, Education Code. Reference: Sections 49410, 49410.2 and 49410.7, Education Code.
HISTORY

1. New Article 7 (Section 1867.2) filed 11-7-86; effective thirtieth day thereafter (Register 86, No. 45). For history of former Article 7, see Register 81, No. 18.

EXHIBIT 5
DEFERRED MAINTENANCE HANDBOOK



Deferred Maintenance Program Handbook

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Preface

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INTRODUCTION

This guidebook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining "grant" funds for the purposes of performing deferred maintenance work on school facilities. It is intended to be an overview of the program for use by school districts, architects, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for the two different types of State funding available. However, it is not meant to be a step-by-step discussion of every conceivable application process, project type, or the eligibility of expenditures. For complete project specific information review the Deferred Maintenance Program (DMP) Regulations located on the OPSC Web site at www.opsc.dgs.ca.gov and, most importantly, contact your deferred maintenance project manager.

THINGS TO KNOW

This edition of the Deferred Maintenance Program Handbook is a result of some significant changes to the program based on the State Allocation Board's (SAB) regulation changes. These changes were undertaken by the OPSC in an effort to strive for unity within regulations, forms, previous SAB policies, and handbook. The following is a result of a collaborative effort between the OPSC, SAB Implementation Committee, and school facility personnel.

A couple of things the reader should keep in mind are:

- The term "district" applies to those entities eligible to apply for deferred maintenance funds under Regulation Section 1866.1, unless otherwise noted.
- The changes contained in this handbook became effective July 1, 2002.
- Due to the program forms becoming part of regulation all the forms were re-numbered.
- Please refer to the definition section of the Regulations if you are unfamiliar with a term used in this handbook.

WHERE TO BEGIN

Chapter 1: Deferred Maintenance Program Overview, Chapter 2: Project Expenditures, Chapter 3: Five Year Plan and Basic Grant along with the appendices contains the information that affects most districts. These chapters will provide the reader with the essential program elements to receive the Basic Grant, for which all districts may apply. Chapter 4: Extreme Hardship Grant is an additional grant beyond the district's Basic Grant and may be available to a district if it has a project meeting the requirements stated in the introduction section of the chapter.

Chapter 1 Deferred Maintenance Program Overview

In this chapter...

INTRODUCTION

The Deferred Maintenance Program (DMP) provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components so that the educational process may safely continue. Typically, this includes roofing, plumbing, heating, air conditioning, electrical systems, wall systems, floor systems, etc. An annual Basic Grant is provided to districts for the major repair or replacement work listed on the *Five Year Plan* (Form SAB 40-20), which is a projection of deferred maintenance work to be performed on a district wide basis over the next five years. An Extreme Hardship Grant is provided in addition to the Basic Grant if the district has a critical project on the five year plan that must be completed within one year due to health and safety or structural reasons.

THE LAW AND REGULATIONS

The DMP is subject to the provisions of California Education Code (EC), Section 17582 through 17588 and 17591 through 17592.5 and the State Allocation Board (SAB) Regulations, Title 2, California Administrative Code, Sections 1866 through 1866.14. Applicant districts are responsible for complying with all laws and regulations for any project undertaken pursuant to the requirements of the DMP.

In making an apportionment the SAB shall assume no legal responsibility for any lawsuits or liens filed against an applicant school district. Neither the State nor any State department or agency thereof, in making an apportionment, shall be required to assume any responsibility not otherwise imposed upon it by law.

PROGRAM FUNDING

The DMP receives it's funding annually. Funding is made available primarily from three sources:

- Excess repayments from the State School Building Aid Program (SSBAP).
- State School Site Utilization Funds.
- Funds provided through the Budget Act for the State School Deferred Maintenance Fund.

In recent years, program funding has mainly relied on the funds provided through the Budget Act. This is due to the decrease of funding in the SSBAP and site utilization funds as payments into these programs dwindle. Unallocated carryover from the prior fiscal year is also used to fund the program.

AVAILABLE FUNDING TYPES

The apportionment types allowed under the Deferred Maintenance Law are:

Apportionment Types

Type	Education Code	Page
Basic Grant	Section 17584(b)	6
Extreme Hardship Grant	Section 17587*	9

*Not less than one-half of all funds made available by EC Section 17587 is to be apportioned to school districts that had an average daily attendance of less than 2,501 during the prior fiscal year.

The amount of funding available for both grant types fluctuates each fiscal year. An item to apportion both the Basic Grants and Extreme Hardship Grants is generally taken to the SAB for approval after the Governor's Budget is approved.

ELIGIBLE DEFERRED MAINTENANCE PROJECTS

The DMP is made up of 11 project categories or types of work that are outlined in EC Section 17582 or otherwise approved by SAB. Most of the project categories are building systems that are necessary components of a facility, without which the building would not be able to function for school purposes. A deferred maintenance project must conform to one of these categories in order for a district to place a project on the five year plan or apply for an Extreme Hardship Grant. For sample project types, please refer to Appendix 1.

PROGRAM PARTICIPATION

Entities that operate as a K–12 public elementary, unified, or high school districts, county superintendent of schools, or one of the regional occupational centers identified in law, may participate in the DMP.

DISABLED VETERAN BUSINESS ENTERPRISES POLICY

Participation goals are not currently required for projects funded by this program.

Chapter 2 Five Year Plan and Basic Grant

In this chapter...

INTRODUCTION

A Basic Grant is available to eligible districts that have a current *Five Year Plan*, Form SAB 40-20 approved by the State Allocation Board (SAB) that encompasses the fiscal year of funding. The Basic Grant and the district's matching share is to be used for projects listed on the SAB approved *Five Year Plan*, Form SAB 40-20.

FIVE YEAR PLAN: SUBMITTALS AND REVISIONS

Helpful Hint:
The SAB does not fund the projects on the district's five year plan but rather approves the five year plan and the proposed projects.

A *Five Year Plan* is good for a period of five fiscal years. The intent of the plan is to forecast deferred maintenance projects within the district over the next five years. It is not intended to be an expenditure report; therefore the project costs reported should be estimates. The district does not have to perform all the work listed on the plan. New or revised plans for the current fiscal year shall be submitted to the OPSC by the last working day in June for that fiscal year.

The *Five Year Plan* allows for a district to designate an individual that has been approved by the District's Governing Board to act on behalf of the district and which the OPSC can contact regarding the DMP. If Part One of the *Five Year Plan* is not completed, the district superintendent must sign the form and OPSC's point of contact will be the superintendent.

Prior to submitting a new or revised version of the plan, the proposals and plans for expenditure of funds for the deferred maintenance of school district facilities must be discussed in a public hearing at a regularly scheduled school board meeting[1]. The district will be asked in the certification section of the form to enter the date this occurred. Each time a revised plan is submitted to the OPSC, this requirement must be adhered to.

A district may amend its approved Five Year Plan as needed for the current and future fiscal years. Plan revisions are not required for estimated cost changes or for moving a project already listed on the plan into a different fiscal year. A revised plan should be submitted to the OPSC for any one of the following:

- The plan has expired.
- Deferred maintenance work will be performed that is currently not listed on the plan or at a school not on the plan.
- If the exact same work was entirely paid for under the School Facility Program (SFP) Modernization or Federal Renovation Program the plan would need to be resubmitted removing the project(s).

[1] Regulation Section 1866.4(3)

Helpful Hint:
In order to use a facility for school purposes, it must be either Division of State Architect (DSA) approved or have a waiver.

The fiscal year in which a district revises the plan will become the starting year for the plan and will project four fiscal years out. The OPSC will not accept revisions to the *Five Year Plan* for prior fiscal years.

Eligible Projects

To place a project on the *Five Year Plan* it must meet all the following criteria:

- Be either a repair and replacement project for one of the school facility components stated in law or approved by the SAB; which have approached or exceeded their normal life expectancy; and,
- Located within district owned facilities that are used for school purposes.

Components with a history of continued repairs indicating a shortened life expectancy may be included as eligible items. Districts currently leasing relocatables from the State Relocatable Classroom Program are exempted from the requirement of "district-owned" and can include deferred maintenance projects for these facilities on the district's *Five Year Plan* provided it meets the remaining requirements stated above.

For COEs only, a recent law change expanded the facilities in which deferred maintenance funding could be used[2]. The law defined school buildings for county offices to include those facilities that are exempt from the Field Act. If the county is leasing a facility, which meets this requirement, the lease must require the COE to maintain the facility in order to expend deferred maintenance funds on the building.

BASIC GRANT

The maximum amount provided by law for the Basic Grant is based on a formula detailed in EC Section 17584(b). The calculation of the maximum amounts is made by the California Department of Education.

The funding level for County Superintendents of Schools (CSS) will be calculated using the formula of one-half of one percent of their total general funds and adult education funds budgeted by CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, debt service, or revenues that are passed through to other local educational agencies.

Basic Grant Apportionment

The SAB apportions funds for the Deferred Maintenance Program (DMP) one year in the arrears. Based on the amount of funds available, a district or county office of education may receive the maximum amount calculated by the CDE, known as the "Maximum Basic Grant" or a prorated amount, known as the "Prorated Basic Grant". The apportionment is subject to the district matching the allocated State funds.

A district that receives an Extreme Hardship Grant will receive the Maximum Basic Grant to contribute to its critical project. For more information on extreme hardship funding requirements, please refer to page 11.

[2] EC Section 17582(a)

DEPOSIT OF DISTRICT FUNDS

In order to receive State Deferred Maintenance funds, the governing board of a school district is required to establish a restricted fund referred to as the "District Deferred Maintenance Fund" (DDMF).

Annually, districts participating in the DMP will make a deposit into the DDMF and have their County Office of Education (COE) certify the funds on deposit. By the COE submitting the *Certification of Deposit*, Form SAB 40-21, which is due to the OPSC 60 days after SAB apportionment of the Basic Grant, the district shall receive matching State funding on a dollar for dollar basis, up to the amount apportioned. Any money deposited into this fund and any interest earned must be used for projects listed on the district's SAB approved Five Year Plan. This fund is subject to an annual audit at the local level.

The district's deposit must be a cash contribution from any non-restricted fund, unmatched carryover, or from the district's restricted Ongoing and Major Maintenance Account[3]. Annual deposits to that account in excess of two and one-half (2½) percent of the district general fund budget may be counted towards the district's matching share.

Matching the Maximum

If a district does not deposit the Maximum Basic Grant as calculated by the CDE, EC Section 17584.1 requires the district's local governing board to submit a report (by the following March 1st) to the Legislature. The report is to include a schedule of the deferred maintenance needs for the current fiscal year and an explanation of how the district plans on meeting its current need without depositing the Maximum Basic Grant. For specific information regarding the report requirements, please refer to EC Section 17584.1.

TRANSFER OF EXCESS FUNDS AND CARRYOVER

Districts are encouraged to use any unmatched State funds on other deferred maintenance projects listed on the approved Five Year Plan. However, EC Section 17583 allows a district to transfer any unmatched State funds to other expenditure classifications in the district. If a district elects to transfer funds to purposes other than deferred maintenance, a school board resolution approving the transfer by a two-thirds vote is required. Districts are required to file the resolution with the county superintendent of schools and the county auditor. A report pursuant to EC Section 17584.1 will need to be filed if the district transfers any unmatched State funds out of the DDMF.

If the district elects not to transfer the excess funds deposited to another expenditure classification, the excess funds deposited may be carried over and used to offset some or all of the match required for a subsequent fiscal year. Carryover that has been reported on the *Certification of Deposits*, Form SAB 40-21 is considered matched and therefore cannot be applied as carryover in subsequent fiscal years.

FUND RELEASE

Once the OPSC receives the Certification of Deposits, Form SAB 40-21 from the COE, the OPSC will generate a fund release. A State warrant (not to exceed the lesser of the amount apportioned or the deposit by the district) will be issued in the county's name by the State Controller's Office for deposit into the district's fund. Funds can be expected within three weeks of OPSC's receipt of the Form SAB 40-21. If the district receives an Extreme Hardship Grant the Basic Grant will not be released until the *Fund Release Authorization* (Form SAB 40-23) is processed.

[3] Regulation Section 1866.4.3

Chapter 3 Extreme Hardship Grant

In this chapter...

Important Note: *The OPSC must determine the hardship project is eligible for State funding prior to the start of construction. A project started prior to this determination will not be recommended for apportionment by the SAB. If the project meets the requirements of a Priority One as stated in Regulation Section 1866.52(c), contact OPSC immediately.*

INTRODUCTION

Applications for an Extreme Hardship Grant are accepted on a continuous basis throughout the fiscal year. Those received prior to the last working day in June are ensured consideration in the next funding cycle. An extreme hardship exists when the SAB determines the existence of all of the following:

- **Financial Test:** The total estimated cost of the critical project is greater than two times the district's maximum basic grant; and,
- **Health and Safety Test:** The district has a critical project on its Five Year Plan which, if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils.

ELIGIBLE PROJECT

An application may include work to repair or replace an existing school building component, located within existing district owned classrooms and/or subsidiary facilities and other non-classroom space located on a school site. Each facility component (i.e., roofing) at a school site makes up one project. A district with only one school may include other essential work (i.e., multiple components), as long as all projects individually meet the above tests, without being subject to the multiple project district contribution requirements stated page 11.

EXTREME HARDSHIP APPLICATION PACKAGE

Helpful Hint:
If the district has additional reports from a roofing company, environmental or mechanical engineer, submitting those in addition to the architect or structural engineers report will help OPSC in it's review of project eligibility.

The following documents are required in order for the application to be deemed complete.

Required Documents

Form Number	Document
SAB 40-20	A revised Five Year Plan, Form SAB 40-20 including the critical project and identifying it in Column 9 of the form.
SAB 40-22	Extreme Hardship Funding Application
None	Detailed cost estimate prepared by a licensed architect or contractor showing quantity and unit cost breakdowns supporting the construction costs listed. The cost estimate shall be subject to review by the OPSC for conformance with the *Saylor Current Construction Cost* publication and at the OPSC's direction, the DSA. Items in the cost estimate shall be limited to only the minimum work necessary to migate the problem. Lumps sums are not allowed.
None	Licensed architect or structural engineer's report detailing: 1. How the project qualifies as a hardship as defined in EC Section 17587. 2. A recommended solution to correct the problem. 3. Detailed description of work being performed.
None	Plot plan identifying location of work.

A district with only one school that is applying for more than one project category will need to submit an *Extreme Hardship Funding Application*, Form SAB 40-22, for each project category and an SAB 40-22 that combines all the projects into one request.

The Extreme Hardship application package is reviewed by the Office of Public School Construction (OPSC) for completeness and placed on a Deferred Maintenance Extreme Hardship workload list by received date order. The workload list can be viewed on the OPSC Web site at www.opsc.dgs.ca.gov. The applications are then processed in date order for presentation to the SAB for consideration.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the OPSC will return the application unprocessed with notification of the missing documents. Should this occur, the district may resubmit the application once the required information is available.

Multiple Extreme Hardship Funding Requests

A district may submit more than one *Extreme Hardship Funding Application*, Form SAB 40-22 in a fiscal year as long as each project meets the financial and health and safety test.

Assignment of Application Number

Upon submittal of an Extreme Hardship Funding Application, Form SAB 40-22, an application number will be assigned to the project. Following the prefix "40", this number will be the five digit code in the California Public School Directory, the last two digits of the beginning fiscal year, in which the district is applying for funding, and lastly the number of projects submitted by the district. For example:

40/99999-02-01

The above number would represent a district's first 2002/2003 Fiscal Year critical project. Districts should use this number when corresponding with the SAB/OPSC.

OPSC REVIEW

After the acceptance of the complete application, the OPSC will process it based on the date received. The OPSC will then conduct a site visit to verify the conditions stated in the architect's or structural engineers report. A follow-up letter after the site visit may be sent requesting additional information. Once all the back-up for the project is received, the OPSC will determine if the project meets the tests stated in law and will notify the district of it's findings. Construction may begin after the OPSC site visit, however, there is no guarantee of OPSC's recommendation for funding until the district has received written notification. Projects that meet the requirements will be presented to the SAB for approval.

DETERMINATION OF EXTREME HARDSHIP GRANT AND DISTRICT CONTRIBUTION (2002/2003 FY Projects and Beyond)

Helpful Hint:
Cost increases for 2002/2003 Fiscal Year projects and beyond where the revised total project cost exceeds $1,000,000, will be subject to the new district contribution requirements.

The total estimated cost of the critical project will determine how the extreme hardship grant is calculated and the amount of funding the district will contribute to the project. The following chart details the different district contribution requirements for a critical project:

District Contribution for a Critical Project

District's Maximum Basic Grant and State's Match	Total Project Cost	Project Number	District Contribution Requirement
Under $1,000,000	Under $1,000,000	First Project	Maximum Basic Grant and State's matching share for the fiscal year the project was funded.
Under $1,000,000	Above $1,000,000	First Project	Maximum Basic Grant and State's matching share for the fiscal year the project was funded AND 50 percent of all costs above $1,000,000.
Under $1,000,000	Any Amount	Second and Subsequent Projects or additional projects from a different fiscal year receiving funding.	50 percent of the total project cost.
Above $1,000,000	Above $1,000,000	First Project	Maximum Basic Grant for the fiscal year the project was funded AND 50 percent of all remaining costs.
Above $1,000,000	Above $1,000,000	Second and Subsequent Projects or additional projects from a different fiscal year receiving funding.	Fifty percent of the total project cost.

SAB APPROVAL PROCESS

Projects will be presented to the SAB on a continuous basis throughout the fiscal year. The SAB approval/action can either be funded or "unfunded" depending upon the extent of Deferred Maintenance funds available. If the approval is "unfunded" the district will be placed on an "unfunded" list by priority order and complete application received date order. If the critical project receives an "unfunded" approval, the extreme hardship grant will be an estimated amount calculated based on the maximum known at the time of approval and will be recalculated using the maximums available at the time of funding. Once funding becomes available projects will be funded based on how the application was placed on the "unfunded" list. Only projects that meet the financial test at the time of funding will receive hardship funding. If the request does not meet the criteria, the district may still complete the project with its Basic Grant and state's matching share.

Funding Priorities

The SAB will utilize the following funding prioritization for Extreme Hardship Grants:

▶ Funding Priorities

Priorty	Description of Projects
1	The immediate closure of a facility due to health and safety or structural problems that precludes pupils from remaining in the facility. School board resolution required, refer to Regulation Section 1859.5.3(c).
2	All other eligible deferred maintenance projects, in date order.

Fund Release

After the SAB apportions the Extreme Hardship Grant, the district will need to deposit an amount equal to the maximum Basic Grant into the District Deferred Maintenance Fund and submit the *Fund Release Authorization*, Form SAB 40-23 along with the supporting documentation. This form is due to the OPSC within one year of SAB apportionment of the project. The OPSC will then process fund releases based on the supporting documentation in date received order. The Extreme Hardship Grant may be prorated if the documents submitted only cover a portion of the project.

Time Limit on Apportionment and Progress Report

The district has one year from the SAB apportionment of the Extreme Hardship Grant to submit the documents for a release of funds and to complete the project. If within six months of SAB apportionment, the district has not submitted the documents for fund release, a narrative report must be submitted to the OPSC. The report must contain the information requested in Regulation Section 1866.5.8(c). A district may request from the SAB a one-time, time extension from the one year requirement under specific circumstances detailed in Regulation Section 1866.5.8(d).

PROJECT INCREASES

A district may be eligible for an Extreme Hardship Grant increase to its critical project if the bid or subsequent re-bids are higher than the total estimated cost of the project or additional related work is encountered within the scope of the original project (i.e., change orders). The following documents are required for an increase to a project:

Required Documents

Type of Increase	Documents Required
Additional Related Work Note: Only expenditures for work outlined in the application and approved by the SAB will be recognized as eligible.	• An amended *Extreme Hardship Funding Application*, Form SAB 40-22, reflecting current project costs. • A revised licensed architect/structural engineer's report detailing why the additional work or cost is necessary. • A revised detailed cost estimate from the architect or contractor, which outlines the cost of the work completed under the initial approval, as well as the additional related work and cost necessary to complete the project. • A copy of the low bid and project specifications. • A copy of the signed and awarded contracts. • Copies of all fully executed change orders. • Plot plan showing the location of the work approved under the original application and then identifying the location of the additional related work.
Low Bids exceeds Total Project Cost	• An amended *Extreme Hardship Funding Application*, Form SAB 40-22, reflecting current project costs. • A revised licensed architect/structural engineer's report detailing why the additional work or cost is necessary. • A copy of the low bid and project specifications. • A copy of the signed and awarded contracts. • Plot plan showing the location of the work included in the bid.

Increases for work that was not originally contained in the scope of the project are not eligible. However, if the work has not been completed the district may submit a new application for the additional work. The OPSC will review the application to determine the eligibility of the project.

EXPENDITURE AUDIT

A final audit is initiated when all project expenditures have been made, but no more than one year after the submittal of the Expenditure Report, Form SAB 40-24[2]. This form is due to the OPSC within two years from the date any funds were released for the project. The OPSC shall complete the audit of expenditures within six months, unless awaiting additional documentation from the district.

A worksheet is available to assist the district in providing detailed expenditure information. The *Detailed Listing of Warrants Issued by the District for Deferred Maintenance Hardship Projects*, Worksheet 184ADM, can be found on the OPSC's Web site.

Documents Required For Extreme Hardship Post Audit

The following documents are required for extreme hardship final audit:

Required Documents

Document Number	Documents Name
SAB 40-24	Expenditure Report
None	Signed and awarded contract(s)
None	Completion notices(s) showing date recorded
None	All invoices except those paid to the main construction contractor
None	A detailed listing of each expenditure. The district may use the Worksheet 184ADM to assist the district in reporting these expenditures.

Ineligible Extreme Hardship Expenditures

The following are some examples of ineligible extreme hardship expenditures:

- Enhancements. For example, if a district has a shingle roof, which qualifies for replacement, it must be replaced with a shingle roof. If the district wishes to replace it with a metal roof, the State will not fund the project, unless (1) the cost is the same or less than that of a shingle roof or (2) the district agrees to fund the difference between the cost of a shingle roof and the cost of a metal roof. Generally, replacements should be like for like unless prohibited by DSA or by local ordinance.
- Reimbursement of architect/structural engineer's fees more than five months prior to OPSC's acceptance of the complete application.
- Service warranties.
- Equipment rental.
- Work done on buildings not owned by the district.
- Work done on buildings not approved by the Division of the State Architect when appropriate.
- Repairs on portable buildings that exceed 50 percent of the replacement cost. The request may be submitted to the SFP as a modernization project.

[2] The one-year audit requirement only applies to projects receiving an apportionment after July 1, 2002.

FUND RECONCILIATION AND COST ANALYSIS

When a complete audit of all expenditures reported by the district has been conducted by the OPSC, a "Deferred Maintenance Program Hardship Project Cost Analysis" report will be issued. This report reflects a summary of the total eligible State funded project costs. In addition, any adjustment made to the district's Form SAB 40-24 and Form SAB 184ADM will also appear in this report. During this process, the district is required to review the report and respond to inquires made by the OPSC.

CLOSING ACTION/RELEASE OF FUNDS

The project's final closing action consists of one of the following:

Closing Actions

If...	Then...
the final eligible State funded costs are within the eligible costs authorized by the SAB...	the OPSC closing action will be executed administratively.
the final eligible costs are in excess of the eligible costs authorized by the SAB...	the OPSC closing action will require SAB approval.

Once the final closing action has been completed by the OPSC, additional expenditures will not be recognized.

RELEASE OF FUNDS/REFUND

Funds due to the district as a result of the closing action will be released to the district. If the closing action determines that a refund is due to the State, a request will be made to the district for the refund.

Chapter 4 Project Expenditures

In this chapter...

INTRODUCTION

The governing board of each district shall have complete control over the funds deposited and the earnings of funds once deposited into the District Deferred Maintenance Fund. Expenditures made from this fund must be expended for projects shown on the district's approved five year plan and be eligible deferred maintenance projects.

LEGAL REQUIREMENTS

All work must be bid in accordance with the Public Contract Code. All contracts must comply with the Education Code, Government Code, Public Contract Code, California Code of Regulations (Title 24), and any local legal requirements.

DEFERRED MAINTENANCE AND MODERNIZATION

Helpful Hint:
If the district bids both the deferred maintenance work and modernization work together be sure to separate the costs for the two types of work so that appropriate costs can be identified at the time of audit.

A district may choose to use both deferred maintenance funding in conjunction with School Facility Program Modernization funds in order to complete a project, provided the work complies with the requirements of deferred maintenance. Depending on the type of Deferred Maintenance funding (Basic Grant or Extreme Hardship Grant) the district will need to comply with the following specific requirements:

- Districts anticipating expenditures of a project being performed in conjunction with a School Facility Program (SFP) modernization project, must have the project on the district's approved Deferred Maintenance Five Year Plan. It is recommended that the district identify in the comments section of the form that a portion of the work will be using SFP modernization grants. In addition, the detail kept on file at the district should be updated to reflect actual projects costs expended from each fund for the purpose of auditing.

- If the district's application for an extreme hardship grant involves proposed work also included in a School Facility Program (SFP) modernization application that has been funded, included on the Modernization Unfunded or Workload List, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project's cost estimate the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, test, inspection or furniture or equipment. If the district cannot make this certification for a funded SFP Modernization application the extreme hardship grant will not be released. If the SFP modernization project is on the Unfunded or Workload List it must be withdrawn prior to the release of the extreme hardship grant to the district.

PROFESSIONAL SERVICES

Architect and structural engineer (A/E) fees shall be allowed as an eligible Basic Grant expenditure under the following conditions:

- An existing system design is faulty and replacement in kind would not alleviate future damage (i.e., a flat roof is redesigned to a sloped system to alleviate recurring leakage and interior damage).
- An obsolete, ineffective system is abandoned due to the district's inability to obtain parts.
- Technological changes prevent portions of the existing system from being used in conjunction with the replacement system and design changes are necessary to accommodate the new system.
- The Division of the State Architect, Office of Regulation Services (DSA/ORS), requires structural changes.

Extreme Hardship: Architect/Structural Engineer

As part of the application requirements of an Extreme Hardship Grant, the district must retain the services of a licensed architect or structural engineer (A/E). The combined compensation for A/E service fees are limited to a maximum of 12 percent of the construction cost when those costs do not exceed $500,000. If the construction costs exceed $500,000, the allowable A/E fees will be calculated based on the sliding scale outlined in Appendix 4, Architect/Engineer Fee Schedule, page 23. For purposes of calculating the A/E service fees, the computed cost is the total award from construction contracts, plus the cost of all approved additive contract change orders (with the exception of items resulting from errors and omissions on the part of the architect). Although these allowances are eligible, the district is encouraged to negotiate the best possible terms for all professional services.

FORCE ACCOUNT LABOR

Force account labor may be recognized as an eligible deferred maintenance expenditure under the following conditions:

- The personnel was hired on a temporary basis to do work solely listed on the SAB approved *Five Year Plan,* Form SAB 40-20.

A district may not reimburse its general fund with deferred maintenance funds by charging labor from a deferred maintenance project done by regular district employees. Charges for materials may be recognized as long as they are not items classified as supplies in the School Accounting Manual.

Appendix 1 Typical School Facilities Components

The following chart provides examples of deferred maintenance projects under each eligible project category. Please note, this is not a complete listing of all eligible projects and other projects may qualify as an eligible expenditure under one of the following school building components.

Typical School Facility Components

School Facility Component	Conditions
Floor Covering: 1. Carpeting 2. Asphlat Tile and Vinyl Asbestos Tile 3. Hardwood Floors	
Painting: 1. Interior of classrooms, library, offices, hallways, cafeteria, restrooms, etc. 2. Exterior stucco, masonry, wood, and metal trim	
Electrical and Communication Systems: 1. Panels and boards 2. Signal systems, including fire alarms and public address 3. Conductors and cables	Must be connected to the main bell system; cannot be free standing.
Classroom Lighting: 1. Substandard incandescent lighting and obsolete fluorescent lighting 2. Fixtures	Light bulb replacement not allowed.
Roofing: 1. Large sections or whole buildings of roofing systems 2. Flashings, gutters, and downspouts 3. Ceiling tiles	Replacement of roofing systems must be for like kind material, pitch, etc.
Plumbing: 1. Piping within boundaries 2. Underground gas, water 3. Sewer, leech fields 4. Well replacement	

continues on following page...

Typical School Facility Components

School Facility Component	Conditions
Heating/Ventilation/Air-Conditioning: 1. Heating a. Gas-fired unvented wall heaters b. Other heating systems i. Boilers ii. Piping c. Individual heating units except gas-fired wall heaters 2. Ventilation and Air-Conditioning Systems a. Central systems b. Individual units c. Cafeteria and automotive fume exhuast systems	
Wall Systems: 1. Doors including hardware 2. Window Assemblies (including wood sash) 3. Indoor gym bleachers that pull out from wall 4. Siding 5. Restroom partitions (attached to wall)	
Paving: 1. Asphalt a. Slurry coat b. Seal 2. Concrete	Like kind replacement only
Underground Toxic Tank: 1. Removal 2. Clean-up	May include ground water monitoring costs if required by public agency
Asbestos: 1. Inspection, sampling, and analysis 2. Removal or encapsulation	When friable

Appendix 2 Frequently Asked Questions

Frequently Asked Questions

Questions	Answers
How may I obtain current information and forms for the Deferred Maintenance Program?	On our Web site at www.opsc.dgs.ca.gov; or, by contacting your Deferred Maintenance Program Project Manager at 916.445.3160.
Can interest earned by a district be used as part of the district deposit in subsequent years?	If the district does not have a critical project, one-half of the interest amount may be applied toward the district deposit. However, if it does have a critical project, the full amount of interest earnings must be applied to the Extreme Hardship Grant or returned to the State.
Will my deferred maintenance project require DSA approval?	The District should contact the DSA for guidance.
On our Five-Year Plan (Form SAB 40-1), can the following items be included: *1. Asbestos inspection?* *2. Door hardware?* *3. Carpets?*	1. Asbestos inspection: Yes, to determine the presence of asbestos except for in the case of annual testing. Routine asbestos inspections generally deemed an administrative cost. 2. Door hardware: Yes, it may be included in the category of "wall systems". 3. Carpets: Yes, it may be included in the category of "floor covering".
Does the district have to bid the project if an emergency situation occurs?	For an "emergency" contract to be awarded under the provisions of the Public Contract Code, Section 20113, the District must: • obtain approval from its School Board, by unanimous vote; and, • obtain approval by the County Superintendent of Schools; and, • comply with the legal requirements listed for the solicitation of bids; and, • obtain contract approval by legal counsel.

Appendix 3 Grant Cycles, Forms and Filing Deadlines

BASIC GRANT FUNDING CYCLE

1. **District:** Either has a current Five Year Plan approved by the SAB or submits to the OPSC a revised plan that includes the current fiscal year.
2. **OPSC/SAB:** Presents the district's Five Year Plan to the SAB for approval (if needed). SAB approval.
3. **OPSC/SAB:** Establishes an apportionment listing of districts receiving the basic grant in the Fall following the end of the fiscal year. Approves and apportions the listing for Basic funds for the previous fiscal year.
4. **District:** Deposit funds in its District Deferred Maintenance Fund for the prior fiscal year.
5. **County Office of Education:** Certifies the amount deposited on the Certification of Deposit (Form SAB 40-21) by district or county superintendent of schools and submits the form to the OPSC within 60 days of SAB apportionment.
6. **OPSC:** Process the release of funds, for the previous fiscal year, through State Controller's office, not to exceed the lesser of the amount apportioned or the amount deposited by the district.

EXTREME HARDSHIP GRANT FUNDING CYCLE

1. **District:** Submits funding application for an Extreme Hardship Grant *by the last working day in June.*
2. **OPSC/SAB:** Processes application and performs site visit of project prior to the start of construction. SAB approval.
3. **OPSC/SAB:** Based on funds available, OPSC establishes an apportionment listing of districts receiving an extreme hardship grant in the Fall following the end of the fiscal year. SAB approval.
4. **District:** Submits the *Fund Release Authorization,* Form SAB 40-23, *within one year* of SAB apportionment. Narrative report due if within *6 months* fund release documents not submitted to OPSC.
5. **OPSC:** Processes a fund release for the Extreme Hardship Grant.
6. **OPSC:** Project audit.

Program Forms and Filing Deadlines

Form	Form Submittal Deadlines
Five Year Plan, Form SAB 40-20	Last working day in June for the current fiscal year.
Certification of Deposits, Form SAB 40-21	Sixty days from SAB apportionment of the Basic Grant.
Extreme Hardship Funding Application, Form SAB 40-22	Last working day in June for the current fiscal year.
Fund Release Authorization, Form SAB 40-23	Within one year from SAB apportionment of Extreme Hardship Grant.
Expenditure Report, Form SAB 40-24	Within two years from the date any funds were released.

Appendix 4 Architect/Structural Engineer Fee Schedule
(Extreme Hardship Only)

The following schedule is used to determine the maximum reimbursable architect or structural engineer fees allowed by the SAB. The rates below are applied to the amount of the project construction contract including change orders.

Maximum Reimbursable Architect Fees

Amount of the Construction Contract	Maximum Percentage
First $ 500,000	12%
Next $ 500,000	11½%
Next $1,000,000	11%
Next $4,000,000	10%
Over $4,000,000	9%

Appendix 5 Applicable Education Code Sections

California Education Code

Section	Description
17582	Provides provisions for the establishment of the District Deferred Maintenance Fund (DDMF) and subsequent expenditures.
17583	Allows for the transfer of excess local funds from the DDMF.
17584	Establishes the calculation method for the Deferred Maintenance Maximum Basic Grant as calculated by the California Department of Education.
17584.1	Sets criteria that the district's Five Year Plan be discussed in a public hearing at a regularly scheduled school board meeting and set reporting requirements for districts that do not set aside the Maximum Basic Grant as calculated pursuant to EC Section 17584.
17585	Establishes guidelines for school districts to receive an additional apportionment from the State, if funds are available for projects listed on their Five Year Plan.
17587	Establishes application and funding criteria for districts that are eligible for an Extreme Hardship Grant.
17588	Establishes the method for determing an Extreme Hardship Grant.
17591	Establishes guidelines for districts regarding the filing and approval of the Five Year Plan.
17592.5	Provides the authority to allocate deferred maintenance funds for two regional occupational centers.

Appendix 6 Ineligible Deferred Maintenance Expenditures

Allowable expenditures consist of major repair or replacement of existing school building components. The following are examples of ineligible deferred maintenance expenditures:

- Projects not included on the SAB approved Five Year Plan
- Projects being performed solely to bring the facility component up to current code
- Repair and maintenance of furniture and equipment (e.g., kitchen equipment, office and movable desks)
- Ongoing preventative maintenance (e.g., periodic inspection and cleaning, replacement of bulbs and minor repairs, individual floor tiles, individual ceiling tiles, etc.)
- Installation of new items that did not previously exist
- Consultant or project management fees
- Energy conservation
- Landscaping, fencing, irrigation, and sprinkler systems
- Athletic stadium equipment (bleachers, score boards, etc.)
- Window curtains and blinds, stage curtains, or black out curtains
- Tables and counter tops (unless permanently attached to a wall)
- Whiteboards, chalkboards, and blackboards
- Playground equipment
- Replacement of portable buildings
- Maintenance or repair of swimming pools
- Administrative Costs

Please be advised that the above listing is only a sample of ineligible projects and does not encompass all the ineligible expenditures concerning the Deferred Maintenance Program.

EXHIBIT B

State of California • Department of General Services • Gray Davis, Governor
OFFICE OF PUBLIC SCHOOL CONSTRUCTION
Interagency Support Division
1130 K Street, Suite 400 • Sacramento, California 95814 • (916) 445-3160

August 11, 2003

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

Dear Ms. Higashi:

As requested in your letter dated July 15, 2003, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the Clovis Unified School District asking the Commission to determine whether specified costs are incurred by the school district as required by statute in participating in the Deferred Maintenance Program (DMP) (Claim Number 02-TC-44). Following please find responses to the questions addressed in your letter:

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

   Participation in the DMP, established through Education Code (EC) Sections 17582 through 17588 and 17591 through 17592.5, is voluntary on the part of school districts. EC Section 17582 states that "...a district *may* establish an account to be known as the "district deferred maintenance account..." No requirement is made in statute that a district is required to establish this account and therefore participate in the program. Districts may choose to maintain facilities through the use of district raised funds. The program elements described in the test claim are only required if a district chooses to participate in the program. Therefore, it is our opinion that the declaration on page 55 of the test claim that the DMP Handbook is an "Executive Order" as defined in Government Code Section 17516 is unfounded, as it only applies to districts choosing to participate in the DMP.

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

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

   Education Code Section 17556(d):
   The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increase level of service.

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

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

The DMP receives its funding annually. Funding is made available primarily from three sources:

- Excess repayments from the State School Building Aid Program (SSBAP)
- State School Site Utilization Fund
- Funds provided through the Budget Act, when applicable.

In recent years, program funding has mainly relied on the funds provided through the Budget Act. This is due to the decrease of funding in the SSBAP and site utilization funds as repayments into these programs dwindle. Following is breakdown of the funding from the program from the last two fiscal years:

Funds Available 2002/2003 Fiscal Year	
Excess Repayments (SSBAP)	$13,952,845
Estimated Site Utilization**	$2,000,000
2003/2004 Budget Act	$76,818,000
TOTAL	**$92,770,845**
**As of 8/8/03 figure unknown	

Funds Available 2001/2002 Fiscal Year	
Excess Repayments (SSBAP)	$15,566,143
Site Utilization	$2,368,921
2002/2003 Budget Act	$205,548,000
TOTAL	**$223,483,064**

If you have any questions regarding this letter, please contact Ms. Elizabeth Dearstyne, Project Manager, at edearsty@dgs.ca.gov or (916) 323-0073.

Sincerely,

LUISA M. PARK
Executive Officer
Office of Public School Construction

LMP:ED:rm

Enclosure

cc: Commission's Parties and Interested Parties List as of 7/8/2003 (Enclosure)

Original List Date: 7/8/2003
Last Updated:
List Print Date: 07/15/2003
Claim Number: 02-TC-44
Issue: Deferred Maintenance Programs

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Fax:

EXHIBIT C

JACK O'CONNELL
State Superintendent of Public Instruction

CALIFORNIA DEPARTMENT OF EDUCATION
1430 N Street
P.O. Box 944272
Sacramento, CA
94244-2720

August 11, 2003

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

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) requests comments from interested parties on a number of test claims submitted by the Clovis Unified School District. The test claims are: School Facilities Funding Requirements (02-TC-30), Design Build Contracts (02-TC-45), Developer Fees (02-TC-42), and Deferred Maintenance Programs (02-TC-44). Due to the fact that the comments for these test claims are generally due at the same time and the test claims generally deal with facilities or related issues, we have consolidated our comments into one piece of correspondence. Our comments for each test claim are as follows.

School Facilities Funding Requirements (02-TC-30)

This is not a mandated program. It is one of various capital funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in this program and any requirements regarding this program are applicable only after districts elect to participate in this program.

Design Build Contracts (02-TC-45)

This is not a mandated program. It is one of several delivery options that school districts can choose to pursue, if school districts elect to enter into design build contracts. Other factual inaccuracies in this claim include:

Page 13, line 10 of the claim states: Education Code Section 17250.35, subdivision (a), requires the school district governing board to retain the services of an architect or structural engineer to monitor compliance with the established performance criteria and design standards.

This is incorrect. The Education Code states that the governing board *may*, and is *strongly encouraged* to, retain the services of an architect or structural engineer throughout the course of the project.

Page 14, line 6 of the claim states: Subdivision (d) assigns all liability for the facility to the design-build entity.

This is incorrect. The Education Code states that the design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

Page 15, line 5 of the claim states: To the extent that these guidelines are adopted, districts would be required to comply.

This is incorrect. The Education Code only states that the governing board shall review the guidelines. The Education Code does not require compliance with the guidelines. It should be noted that the claimant correctly interpreted this provision on page 5, line 4 of the test claim.

Developer Fees (02-TC-42)

This is not a mandated program. This is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities. Any requirements that apply to the establishment and collection of developer fees are applicable only after districts elect to levy development fees, charges, and/or dedications.

Deferred Maintenance Programs (02-TC-44)

This is not a mandated program. School district elect to participate in this program in order to receive funding for deferred maintenance and for the removal and containment of asbestos or lead. Any requirements regarding this program are applicable only after districts elect to participate in the program.

As required by CSM regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Should you have questions, please contact Juan Sanchez at (916) 322-3074.

Sincerely,

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

JS:db

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: School Facilities Funding Requirements, Design Build Contracts, Developer Fees, and Deferred Maintenance Programs

Claim Number: (02-TC-30), (02-TC-45), (02-TC-42), (02-TC-44)

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 Street, Suite 2213, Sacramento, CA 95814.

On August 11, 2003 I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 Street, Suite 2213, Sacramento, CA 95814, for Interagency Mail Service, to the parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on August 11, 2003, at Sacramento, California.

Juan Sanchez

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

Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Keith B. Petersen
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Mr. Paul Minney
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Mr. Michael Havey
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Clovis USD
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Mr. Thomas J. Donner
Santa Monica Community College
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EXHIBIT D

SixTen and Associates
Mandate Reimbursement Services

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

September 13, 2003

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

Re: Test Claim 02-TC-44
Clovis Unified School District and
Deferred Maintenance Programs

Dear Ms. Higashi:

I have received the comments of Department of General Services (DGS) by the Office of Public School Construction, dated August 11, 2003, and the State Superintendent of Public Instruction (SPI) dated August 11, 2003 to which I now respond on behalf of the test claimant.

None of the objections generated by SPI are included in the statutory exceptions set forth in Government Code Section 17556. DGS cites subdivision (b) of Section 17556 incorrectly. The objections stated additionally fail for the following reasons:

1. The Comments of the DGS and SPI are Incompetent and Should be Excluded

Test claimant objects to the Comments of the DGS and SPI, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DGS and SPI comments do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of fact made by DGS in part 3 of its comments under point 3 wherein statements are made about amounts of funding in past years since it has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

2. The Deferred Maintenance Program is not Discretionary

Both DGS and SPI claim the entire program is discretionary. This is not true. For example Education Code Section 17584.1[1] *requires* the following:

---

[1] Education Code Section 17584.1, added by Chapter 390, Statutes of 1999, Section 3:

"(a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(a) Subdivision (a) provides that the governing board of a school district *shall discuss* proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) Subdivision (b) provides that, in any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district *shall submit* a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) Subdivision (c) provides that the report required pursuant to subdivision (b) *shall include* all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Subdivision (d) provides that copies of the report *shall be made available* at each schoolsite within the school district and shall be provided to the public upon request.

Therefore, parts of the test claim legislation are clearly mandatory.

3. Allowing for Matching Funds is not a Viable Option

---

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard."

Subdivision (e) of Education Code Section 17584.1 provides that the purposes of the requirements set forth above is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard. *Local Accountability* is the key phrase of that provision.

DGS, in its Deferred Maintenance Program Handbook (January 2003)[2] describes the program as follows:

> "The Deferred Maintenance Program (DMP) provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components so that the education process may safely continue....Applicant districts are responsible for complying will all laws and regulations for any project undertaken pursuant to the requirements of the DMP."

Now, to obtain these dollar-for-dollar funds, school districts need only comply with the requirements of the test claim legislation. DGS and SPI suggest that establishing an account to receive those matching funds "for major repair or replacement of existing school building components so that the education process may safely continue" is a discretionary act and school districts have the option of paying for these needed repairs all by themselves. In view of the "local accountability" feature of the legislation, this is not a viable option.

4. Bond Revenues are not Service Charges, Fees or Assessments

DGS offers Government Code Section 17556, subdivision (d)[3] for the proposition that test claimants are precluded from recovery because the mandated costs can be paid for by local bonds or other revenue sources, including developer fees. Bond revenues and other revenue sources are not "service charges, fees or assessments", as that term has been interpreted in the field of mandate reimbursements. Bond revenues are not service charges, fees or assessments.

In addition, Section 17556 presupposes the existence of a mandate which is

---

[2] Chapter 1 - Deferred Maintenance Program Overview, at page 1

[3] Government Code Section 17556, subdivision (d), precludes a finding of mandated costs if the school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

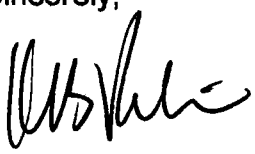
contrary to the state's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students. Finally, the levy of service charges, fees and assessment against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

The responses of the DGS and SPI should be ignored as legally incompetent for their failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, the test claim should be approved as submitted because their comments are both factually and legally incorrect.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

Original List Date: 7/8/2003
Last Updated:
List Print Date: 07/15/2003
Claim Number: 02-TC-44
Issue: Deferred Maintenance Programs

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Luisa M. Park (A-17)
State Allocation Board
1130 K Street, Suite 400
Sacramento, CA 95814
Tel:
Fax:

DECLARATION OF SERVICE

RE: Deferred Maintenance Programs
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of September 13, 2003, addressed as follows:

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

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

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

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

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

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/16/03, at San Diego, California.

D J Bramwell

Diane Bramwell

EXHIBIT E

DEPARTMENT OF FINANCE

GRAY DAVIS, GOVERNOR

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

September 15, 2003

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-44, Deferred Maintenance Programs, submitted by the Clovis Unified School District (CUSD). Based on our review of the claim and the relevant State statutes, we believe that a school district's participation in the State Deferred Maintenance Program (program) is the result of a discretionary action taken by the governing board of the district. As a result, we conclude that the cited State laws do not create a State-mandated reimbursable activity; therefore the test claim should be denied.

As noted in CUSD's test claim, Education Code Section 17582 states, "The governing board of each school district may establish a restricted fund to be known as the 'district deferred maintenance fund' for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing..." (underlining added). While a majority of school districts elect to participate in the program each year, there are some school districts that choose not to participate in the program. Thus, school district's participation in this program is due to a discretionary action taken by the school district; therefore it is not a State-mandated activity. Further, we note that the Deferred Maintenance Program Handbook of January 2003, which CUSD's declared an "Executive Order as defined in the Government Code Section 17516 in the test claim, and the Education Code sections and regulations referenced in the test claim are applicable only after school districts elect to participate in the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 15, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328, or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-44

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.

September 15, 2003
at Sacramento, CA

Walt Schaff

PROOF OF SERVICE

Test Claim Name: Deferred Maintenance Programs
Test Claim Number CSM-02-TC-44

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On September 15, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

E-08
Department of Education
Fiscal and Administrative Services Division
Attention: Gerald Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

A-17
Office of Public School Construction
Attention: Luisa M. Park
1130 K Street, Suite 400
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Shields Consulting Group, Inc.
Attention: Steve Shields
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Sacramento, CA 95816

Centration, Inc.
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Attention: Keith Petersen
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San Diego, CA 92117

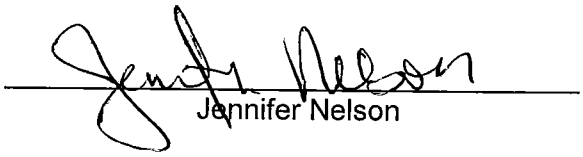
Clovis Unified School District
Attention: Bill McGuire
1450 Herndon
Clovis, CA 93611-0599

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

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

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

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 September 15, 2003, at Sacramento, California.



Jennifer Nelson

EXHIBIT F

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
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E-Mail: Kbpsixten@aol.com

October 10, 2003

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

Re: Test Claim 02-TC-44
Clovis Unified School District
Deferred Maintenance Programs

Dear Ms. Higashi:

I have received the comments of the Department of Finance (DOF) dated September 15, 2003 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 comments do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of fact made by DOG, such as "there are some school districts that choose not to participate in the program" since it has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

2. Deferred Maintenance Programs are not Discretionary

DOF contends that Deferred Maintenance Programs are discretionary. This is not true. For example Education Code Section 17584.1[1] *requires* the following:

---

[1] Education Code Section 17584.1, added by Chapter 390, Statutes of 1999, Section 3:

"(a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) In any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) The report required pursuant to subdivision (b) shall include all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside

(a) Subdivision (a) provides that the governing board of a school district *shall discuss* proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.

(b) Subdivision (b) provides that, in any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district *shall submit* a report to the Legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.

(c) Subdivision (c) provides that the report required pursuant to subdivision (b) *shall include* all of the following:

(1) A schedule of the complete school facilities deferred maintenance needs of the school district for the current year, including a schedule of costs per schoolsite and total costs.

(2) A detailed description of the school district's spending priorities for the current year, and an explanation of why those priorities, or any other considerations, have prevented the school district from setting aside sufficient local funds so as to permit it to fully fund its deferred maintenance program and, if eligible, to participate in the state deferred maintenance funding program as set forth in Section 17584.

(3) An explanation of how the governing board of a school district plans to meet its current-year facilities deferred maintenance needs without setting aside the funds set forth in Section 17584.

(d) Subdivision (d) provides that copies of the report *shall be made available* at each schoolsite within the school district and shall be provided to the public upon request.

Therefore, these provisions of the test claim legislation are clearly mandatory.

3. Bypassing Matching Funds is not a Viable Option

Subdivision (e) of Education Code Section 17584.1 provides that the purposes of the requirements set forth above is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard. *Local accountability* is the key phrase

---

the funds set forth in Section 17584.

(d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.

(e) The purposes of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard."

of that provision.

In the Department of General Services (DGS) Deferred Maintenance Program Handbook (January 2003)[2] the program is described as follows:

> "The Deferred Maintenance Program (DMP) provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components so that the education process may safely continue....Applicant districts are responsible for complying will all laws and regulations for any project undertaken pursuant to the requirements of the DMP."

To obtain these dollar-for-dollar funds, school districts must comply with the requirements of the test claim legislation. DOF suggests that establishing an account to receive those matching funds is a discretionary act and school districts have the option of paying for these needed repairs without the benefit of matching funds. In view of the "local accountability" feature of the legislation, bypassing matching funds is not a viable option.

The response of the DOF should be disregarded as legally incompetent for its failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, the test claim should be approved as submitted because its comments are both factually and legally incorrect.

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

[2] Chapter 1 - Deferred Maintenance Program Overview, at page 1

DECLARATION OF SERVICE

RE: Deferred Maintenance Programs
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of October 10, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

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

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

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

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 10/10/03, at San Diego, California.

D. Bramwell
Diane Bramwell

Original List Date: 7/8/2003
Last Updated:
List Print Date: 08/18/2003
Claim Number: 02-TC-44
Issue: Deferred Maintenance Programs

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative
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Fax: (858) 514-8645

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Claimant
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Fax: (916) 727-1734

Mr. Steve Smith
Mandated Cost Systems, Inc.
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Rancho Cordova, CA 95670

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Fax: (916) 669-0889

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
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Sun City, CA 92586

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Education Mandated Cost Network
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Mr. Arthur Palkowitz
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Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
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Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
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Fax: (916) 327-8306

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814
Tel: (916) 445-8913
Fax: (916) 327-0225

Ms. Luisa M. Park (A-17)
State Allocation Board
1130 K Street, Suite 400
Sacramento, CA 95814
Tel:
Fax:

EXHIBIT G

SixTen and Associates
Mandate Reimbursement Services

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November 21, 2007

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

Re: No. CSM. 02-TC -44
Deferred Maintenance Programs (K-12)

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 2, CCR, sections included in the test claim.

Sincerely,

Keith B. Petersen

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

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	)	No. CSM. 02-TC-44
	)	
Test Claim Filed June 27, 2003	)	Deferred Maintenance Programs (K-12)
	)	
	)	History Index for
	)	Title 2, California Code of Regulations
by Clovis Unified School District	)	
	)	Section 1866
	)	Section 1866.1
	)	Section 1866.2
	)	Section 1866.3
	)	Section 1866.4
	)	Section 1866.4.1
	)	Section 1866.4.2
	)	Section 1866.4.3
	)	Section 1866.4.4
	)	Section 1866.4.6
	)	Section 1866.4.7
	)	Section 1866.5
	)	Section 1866.5.1
	)	Section 1866.5.2
	)	Section 1866.5.3
	)	Section 1866.5.4
	)	Section 1866.5.5
	)	Section 1866.5.6
	)	Section 1866.5.7
	)	Section 1866.5.8
	)	Section 1866.5.9
	)	Section 1866.7
	)	Section 1866.8
	)	Section 1866.9

)	Section 1866.9.1
)	Section 1866.10
)	Section 1866.12
)	Section 1866.13
)	Section 1866.14
)	Section 1867.2
)	

SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 2, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 2, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 80-16	§ 1866-1866.10	New subgroup 12 (Articles 1-6) filed 4-18-80 as emergency regulations.
Register 80-26	§ 1866-1866.10	Filed Certificate of Compliance.
	§ 1866.11-1866.15	Added new sections.
Register 81-18	§ 1866: Added a new subsection (a)(10).	
	§ 1866.3: Amendment to section.	
	§ 1866.11: Repealed section.	
	§ 1866.12-1866.15	Article 7 Repealed.
Register 82-31	§ 1866.3: Amendment to section.	
Register 86-9	§ 1866: Amendment of subsection (a)(10).	
Register 86-45	§ 1867.2: Added a new section.	

Register 86-49 § 1866.5.1: Added a new section.

Register 86-52 § 1866.12: Amendment of subsections (a)(7) and (8).

Register 87-17 § 1866.5: Amended.

Register 87-46 § 1866.5.1: Amendment of subsection (a).

Register 03-03 § 1866: Amendment of section and Note.

§ 1866.1: Amendment of article heading, section heading, section and Note.

§ 1866.2: Amendment of section heading and added a new Note.

§ 1866.3: Amendment of section heading and Note.

§ 1866.4: Amendment of article heading, section heading, section and Note.

§ 1866.4.1: Added a new section.

§ 1866.4.2: Added a new section.

§ 1866.4.3: Added a new section.

§ 1866.4.4: Added a new section.

§ 1866.4.5: Repealed section

§ 1866.4.6: Added a new section.

§ 1866.4.7: Added a new section.

§ 1866.5: Amendment of article heading, section heading, repealer, and Note. Added a new section.

§ 1866.5.1: Renumbered to § 1866.5.3.

§ 1866.5.2: Added a new section.

§ 1866.5.3: Added a new section, renumbered from § 1866.5.1.

§ 1866.5.4: Added a new section.

§ 1866.5.5: Added a new section.

§ 1866.5.6: Added a new section.

§ 1866.5.7: Added a new section.

§ 1866.5.8: Added a new section.

§ 1866.5.9: Added a new section.

§ 1866.6: Repealed section.

§ 1866.7: Amendment of article heading, section, and Note.

§ 1866.8: Amendment of section heading, section, and Note.

§ 1866.9: Amendment of section heading, repealer and Note.

§ 1866.9.1: Added new section.

§ 1866.10: Amendment of Note.

§ 1866.11: Repealed section

§ 1866.12: Added new section.

§ 1866.13: Added new section.

§ 1866.14: Added new section.

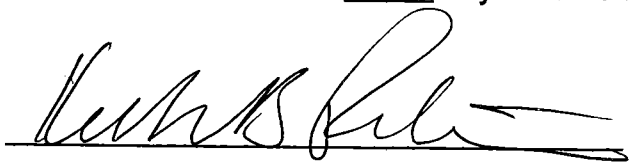
Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

/

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 document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 21 day of November 2007, at Sacramento, California



FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 2, CCR Registers

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order to accomplish the major repair or replacement workload annually over a five year period within projected resources, and prepared using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems of school buildings, asphalt paving or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The term also includes the exterior and interior painting of school buildings.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:

(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.

(2) That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

(Register 80, No. 16—4-19-80)

Article 3. Application Procedure

1866.2. Form of Application.

A request to the Board for an apportionment under the Act shall be transmitted to the Executive Officer for recommendations and presentation to the Board. Such request shall be in letter form signed by the Superintendent of the District and having attached thereto the district's five year plan of maintenance needs as prescribed by Section 39620 of the Education Code and these regulations.

1866.3. Filing and Review of Applications.

Applications for an apportionment shall be filed with the Executive Officer prior to December of each year. All applications received by that date, will be presented to a subsequent meeting of the Board for consideration in the distribution of State School Deferred Maintenance funds which are made available for the fiscal year.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 4. Five Year Plan of Maintenance Needs

1866.4. Form of Five Year Plan of Maintenance Needs.

(a) Section 39620 of the Education Code establishes the requirement of filing with the Board a five year plan of the maintenance needs of the district.

(b) A sample format for the school district five year plan of maintenance needs, designed to provide the minimum necessary information required by the Board to make approval determinations, shall be supplied by the Executive Officer of the Board upon request. Major repair or replacement projects to be included in the plan must conform to those categories authorized in Section 39618 of the Act and these regulations. Assignment of priorities by the district should be made in such an order that will emphasize those project categories that would prevent further severe deterioration and/or damage to school facilities.

(c) Eligible items of major repair or replacement shall be limited to those school facility components which have approached or exceeded their normal life expectancy unless a history of continued repairs indicates a shortened life expectancy.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 5. Apportionments

1866.5. Acceptance and Distribution of Apportioned State School Deferred Maintenance Funds.

(a) The acceptance of any apportionment of State School Deferred Maintenance Funds pursuant to the Act shall be deemed subject to:

(1) The terms of the Act.

(2) The regulations pertaining thereto.

(b) Apportionments from the State School Deferred Maintenance Fund shall be distributed to applicant districts qualifying for an apportionment pursuant to Sections 39619, 39619.5 and 39620 of the Education Code. Allocation of the State funds available each year, less not to exceed 5 percent, shall be distributed to qualifying districts in direct proportion to the amount of local funds deposited in the district's deferred maintenance fund up to a maximum of ½ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(c) Of the State funds available each year not to exceed 5 percent shall be reserved to be apportioned by the Board to those districts qualifying for an additional apportionment in instances of extreme hardship pursuant to Section 39619.5 of the Education Code, provided the district agrees that State apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.6. Method of Payment to School District.

(a) Each apportionment when ready for payment shall be certified by the Executive Officer to the State Controller who shall draw his warrant for such payment in the manner prescribed by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 6. Expenditures

1866.7. Control of Expenditures.

Section 39618 (c) of the Education Code provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in Section 39618 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.8. Expenditures by Districts Subject to Competitive Bidding.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in Sections 39618 and 39619.5 of the Education Code shall be made subject to competitive bidding where, and in the manner, required by the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.9. Compliance with Laws.

All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Title 2, CCR, Register 80-26

§ 1866

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order to accomplish the major repair or replacement workload annually over a five year period within projected resources, and prepared using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems of school buildings, asphalt paving or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The term also includes the exterior and interior painting of school buildings.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:

(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.

(2) That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

(Register 80, No. 26—6-28-80)

1866.11. Payment and Performance Bonds.

In connection with any construction of facilities by a district authorized under the Act and these regulations, the district shall require of the contractor payment and performance bonds as required by law.

NOTE: Authority cited: Section 15303, Government Code. Reference: Section 39618–39681, Education Code.

HISTORY:

1. New section filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).

Article 7. Miscellaneous

1866.12. Director of General Services.

The Director of General Services shall perform all acts necessary to carry out the provisions of the Act except such functions as are reserved to the board and to other agencies by law or by these regulations and shall provide such staff assistance to the board as may be necessary. This shall include adoption of such operating procedures as he deems essential to carrying out the provisions of the Act that are not in conflict with said Act or these regulations.

NOTE: Authority cited: Section 15303, Government Code. Reference: Section 39618–39681, Education Code.

HISTORY:

1. New Article 7 (Sections 1866.12–1866.15) filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).

1866.13. Compliance with Laws.

All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.

NOTE: Authority cited: Section 15303, Government Code. Reference: Sections 39618–39681, Education Code.

1866.14. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15303, Government Code. Reference: Sections 39618–39681, Education Code.

1866.15. Provisions of Resolution Forms.

(a) Actions of the board pursuant to the Act shall be deemed to incorporate all of the provisions of resolution forms adopted by the board for the purposes of such action. The executive officer shall utilize such resolution form in advising the affected school district of the board action, but is authorized to modify such form before transmitting it to the district to the extent the specific action of the board is inconsistent with such form.

NOTE: Authority cited: Section 15303, Government Code. Reference: Sections 39618–39681, Education Code.

Title 2, CCR, Register 81-18

§ 1866

§ 1866.3

§1867.2

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order to accomplish the major repair or replacement workload annually over a five year period within projected resources, and prepared using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems of school buildings, asphalt paving or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The term also includes the exterior and interior painting of school buildings.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious weather damage to the remainder of the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a) (10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:

(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.

(2) That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 3. Application Procedure

1866.2. Form of Application.

A request to the Board for an apportionment under the Act shall be transmitted to the Executive Officer for recommendations and presentation to the Board. Such request shall be in letter form signed by the Superintendent of the District and having attached thereto the district's five year plan of maintenance needs as prescribed by Section 39620 of the Education Code and these regulations.

1866.3. Filing and Review of Applications.

Applications for an apportionment shall be filed with the Executive Officer prior to December of each year. For the 1980–81 fiscal year applications filed prior to April, 1981, shall be eligible for participation in the program. All applications received by the applicable date, will be presented to a subsequent meeting of the Board for consideration in the distribution of State School Deferred Maintenance funds which are made available for the fiscal year.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. Amendment filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).

Article 4. Five Year Plan of Maintenance Needs

1866.4. Form of Five Year Plan of Maintenance Needs.

(a) Section 39620 of the Education Code establishes the requirement of filing with the Board a five year plan of the maintenance needs of the district.

(b) A sample format for the school district five year plan of maintenance needs, designed to provide the minimum necessary information required by the Board to make approval determinations, shall be supplied by the Executive Officer of the Board upon request. Major repair or replacement projects to be included in the plan must conform to those categories authorized in Section 39618 of the Act and these regulations. Assignment of priorities by the district should be made in such an order that will emphasize those project categories that would prevent further severe deterioration and/or damage to school facilities.

(c) Eligible items of major repair or replacement shall be limited to those school facility components which have approached or exceeded their normal life expectancy unless a history of continued repairs indicates a shortened life expectancy.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 5. Apportionments

1866.5. Acceptance and Distribution of Apportioned State School Deferred Maintenance Funds.

(a) The acceptance of any apportionment of State School Deferred Maintenance Funds pursuant to the Act shall be deemed subject to:

(1) The terms of the Act.

(2) The regulations pertaining thereto.

(b) Apportionments from the State School Deferred Maintenance Fund shall be distributed to applicant districts qualifying for an apportionment pursuant to Sections 39619, 39619.5 and 39620 of the Education Code. Allocation of the State funds available each year, less not to exceed 5 percent, shall be distributed to qualifying districts in direct proportion to the amount of local funds deposited in the district's deferred maintenance fund up to a maximum of ⅓ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(c) Of the State funds available each year not to exceed 5 percent shall be reserved to be apportioned by the Board to those districts qualifying for an additional apportionment in instances of extreme hardship pursuant to Section 39619.5 of the Education Code, provided the district agrees that State apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.6. Method of Payment to School District.

(a) Each apportionment when ready for payment shall be certified by the Executive Officer to the State Controller who shall draw his warrant for such payment in the manner prescribed by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 6. Expenditures

1866.7. Control of Expenditures.

Section 39618 (c) of the Education Code provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in Section 39618 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.8. Expenditures by Districts Subject to Competitive Bidding.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in Sections 39618 and 39619.5 of the Education Code shall be made subject to competitive bidding where, and in the manner, required by the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.9. Compliance with Laws.

All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.11. Payment and Performance Bonds.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39618–39621, Education Code.

HISTORY:

1. New section filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Repealer filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).

Article 7. Miscellaneous

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39618–39621, Education Code.

HISTORY:

1. New Article 7 (Sections 1866.12–1866.15) filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Repealer of Article 7 (Sections 1866.12–1866.15) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).

Title 2, CCR, Register 82-31

§ 1866.3

(Register 82, No. 31—7-31-82)

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:

(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.

(2) That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 3. Application Procedure

1866.2. Form of Application.

A request to the Board for an apportionment under the Act shall be transmitted to the Executive Officer for recommendations and presentation to the Board. Such request shall be in letter form signed by the Superintendent of the District and having attached thereto the district's five year plan of maintenance needs as prescribed by Section 39620 of the Education Code and these regulations.

1866.3. Filing and Review of Applications.

Applications for an apportionment shall be filed with the Executive Officer prior to April each year. All applications received by the applicable date, will be presented to a subsequent meeting of the Board for consideration in the distribution of State School Deferred Maintenance funds which are made available for the fiscal year. The Board, by the unanimous vote of the members present, can make an exception to the filing date.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39620, Education Code.

HISTORY:

1. Amendment filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
2. Amendment filed 7-28-82; effective thirtieth day thereafter (Register 82, No. 31).

Article 4. Five Year Plan of Maintenance Needs

1866.4. Form of Five Year Plan of Maintenance Needs.

(a) Section 39620 of the Education Code establishes the requirement of filing with the Board a five year plan of the maintenance needs of the district.

(b) A sample format for the school district five year plan of maintenance needs, designed to provide the minimum necessary information required by the Board to make approval determinations, shall be supplied by the Executive Officer of the Board upon request. Major repair or replacement projects to be included in the plan must conform to those categories authorized in Section 39618 of the Act and these regulations. Assignment of priorities by the district should be made in such an order that will emphasize those project categories that would prevent further severe deterioration and/or damage to school facilities.

(Register 86, No. 9—3-1-86)

SUBGROUP 12. STATE SCHOOL DEFERRED MAINTENANCE

DETAILED ANALYSIS

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(Register 86, No. 9—3-1-86)

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order to accomplish the major repair or replacement workload annually over a five year period within projected resources, and prepared using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems of school buildings, asphalt paving or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The term also includes the exterior and interior painting of school buildings.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five-year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2-27-86; effective thirtieth day thereafter (Register 86, No. 9).

(Register 88, No. 46—11-8-88)

SUBGROUP 12. STATE SCHOOL DEFERRED MAINTENANCE

DETAILED ANALYSIS

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order to accomplish the major repair or replacement workload annually over a five year period within projected resources, and prepared using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems of school buildings, asphalt paving or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The term also includes the exterior and interior painting of school buildings.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five-year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2-27-86; effective thirtieth day thereafter (Register 86, No. 9).

(Register 86, No. 45—11-8-86)

1866.8. Expenditures by Districts Subject to Competitive Bidding.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in Sections 39618 and 39619.5 of the Education Code shall be made subject to competitive bidding where, and in the manner, required by the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.9. Compliance with Laws.

All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.11. Payment and Performance Bonds.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39618–39621, Education Code.

HISTORY:

1. New section filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Repealer filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).

Article 7. Asbestos Abatement

1867.2. Matching Funds.

(a) The State Allocation Board will fund 50% of each eligible district's abatement projects. The State Allocation Board may increase the apportionment to a district, upon request, if the required district contribution shown below is in excess of ½ of 1% of the district's budgeted General Fund and Adult Education Fund, less capital outlay and debt service.

A.D.A.	Required District Contribution
4,499 or less	25% of project cost
4,500 or more	50% of project cost

In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund the lesser of the ½ of 1% figure each year for a period of five years or the full percentage of the required district contribution. Installment payments will cease at the time the required district contribution is attained or at the end of five years, whichever occurs first.

(b) Funds may be apportioned on estimated project cost, however, any savings realized after the project is completed will revert to the State Asbestos Abatement Fund. A district certification of project completion must be submitted to OLA within 30 days of completion.

NOTE: Authority cited: Section 15503, Government Code; and Sections 16009 and 39619.6, Education Code. Reference: Sections 49410, 49410.2 and 49410.7, Education Code.

HISTORY:

1. New Article 7 (Section 1867.2) filed 11-7-86; effective thirtieth day thereafter (Register 86, No. 45). For history of former Article 7, see Register 81, No. 18.

Title 2, CCR, Register 86-49

§ 1866.5.1

(Register 86, No. 49—12-6-86)

SUBGROUP 12. STATE SCHOOL DEFERRED MAINTENANCE

DETAILED ANALYSIS

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.
(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.
(6) Executive Officer. The Executive Officer of the State Allocation Board.
(7) Five Year Plan of Maintenance Needs. The district's plan in priority order to accomplish the major repair or replacement workload annually over a five year period within projected resources, and prepared using the format to be supplied by the Executive Officer of the Board.
(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems of school buildings, asphalt paving or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes. The term also includes the exterior and interior painting of school buildings.
(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.
(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five-year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:
1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2-27-86; effective thirtieth day thereafter (Register 86, No. 9).

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:
(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.

(2) That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 3. Application Procedure

1866.2. Form of Application.

A request to the Board for an apportionment under the Act shall be transmitted to the Executive Officer for recommendations and presentation to the Board. Such request shall be in letter form signed by the Superintendent of the District and having attached thereto the district's five year plan of maintenance needs as prescribed by Section 39620 of the Education Code and these regulations.

1866.3. Filing and Review of Applications.

Applications for an apportionment shall be filed with the Executive Officer prior to April each year. All applications received by the applicable date, will be presented to a subsequent meeting of the Board for consideration in the distribution of State School Deferred Maintenance funds which are made available for the fiscal year. The Board, by the unanimous vote of the members present, can make an exception to the filing date.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39620, Education Code.

HISTORY:

1. Amendment filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
2. Amendment filed 7-28-82; effective thirtieth day thereafter (Register 82, No. 31).

Article 4. Five Year Plan of Maintenance Needs

1866.4. Form of Five Year Plan of Maintenance Needs.

(a) Section 39620 of the Education Code establishes the requirement of filing with the Board a five year plan of the maintenance needs of the district.

(b) A sample format for the school district five year plan of maintenance needs, designed to provide the minimum necessary information required by the Board to make approval determinations, shall be supplied by the Executive Officer of the Board upon request. Major repair or replacement projects to be included in the plan must conform to those categories authorized in Section 39618 of the Act and these regulations. Assignment of priorities by the district should be made in such an order that will emphasize those project categories that would prevent further severe deterioration and/or damage to school facilities.

(c) Eligible items of major repair or replacement shall be limited to those school facility components which have approached or exceeded their normal life expectancy unless a history of continued repairs indicates a shortened life expectancy.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 5. Hardship Apportionments and Prioritization of Project Categories

1866.5. Acceptance and Distribution of Apportioned State School Deferred Maintenance Funds.

(a) The acceptance of any apportionment of State School Deferred Maintenance Funds pursuant to the Act shall be deemed subject to:

(1) The terms of the Act.

(2) The regulations pertaining thereto.

(b) Apportionments from the State School Deferred Maintenance Fund shall be distributed to applicant districts qualifying for an apportionment pursuant to Sections 39619, 39619.5 and 39620 of the Education Code. Allocation of the State funds available each year, less not to exceed 5 percent, shall be distributed to qualifying districts in direct proportion to the amount of local funds deposited in the district's deferred maintenance fund up to a maximum of ⅓ percent of the total general funds budgeted by the district for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service.

(c) Of the State funds available each year not to exceed 5 percent shall be reserved to be apportioned by the Board to those districts qualifying for an additional apportionment in instances of extreme hardship pursuant to Section 39619.5 of the Education Code, provided the district agrees that State apportionments pursuant to Section 39619 in future years will be reduced to offset the increased apportionment.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.5.1. Prioritization of Critical Project Categories for Hardship Apportionments.

(a) In the event available funding is insufficient to fully fund all hardship requests in any given fiscal year, the Board shall utilize the following prioritized list to apportion funds for critical hardship projects:

Description of Projects	Priority No.
Roofing	1
Plumbing (Water/Sewer)	2
Heating	3
Air-Conditioning	4
Electrical	5
Underground Tanks	6
Wall Systems	7
Floor Systems	8
Paving	9
Other	10

(b) The Board may make exceptions to the priorities on a case-by-case basis for the benefit of the pupils affected.

(c) The Board shall maintain a sufficient reserve for unexpected emergencies and ongoing cost increases.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New section filed 12-4-86; effective thirtieth day thereafter (Register 86, No. 49).

(Register 88, No. 49—12-6-88)

1866.6. Method of Payment to School District.

(a) Each apportionment when ready for payment shall be certified by the Executive Officer to the State Controller who shall draw his warrant for such payment in the manner prescribed by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 6. Expenditures

1866.7. Control of Expenditures.

Section 39618 (c) of the Education Code provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in Section 39618 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.8. Expenditures by Districts Subject to Competitive Bidding.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in Sections 39618 and 39619.5 of the Education Code shall be made subject to competitive bidding where, and in the manner, required by the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.9. Compliance with Laws.

All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

1866.11. Payment and Performance Bonds.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39618–39621, Education Code.

HISTORY:

1. New section filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Repealer filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).

Article 7. Asbestos Abatement

1867.2. Matching Funds.

(a) The State Allocation Board will fund 50% of each eligible district's abatement projects. The State Allocation Board may increase the apportionment to a district, upon request, if the required district contribution shown below is in excess of ½ of 1% of the district's budgeted General Fund and Adult Education Fund, less capital outlay and debt service.

A.D.A.	Required District Contribution
4,499 or less	25% of project cost
4,500 or more	50% of project cost

In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund the lesser of the ½ of 1% figure each year for a period of five years or the full percentage of the required district contribution. Installment payments will cease at the time the required district contribution is attained or at the end of five years, whichever occurs first.

(b) Funds may be apportioned on estimated project cost, however, any savings realized after the project is completed will revert to the State Asbestos Abatement Fund. A district certification of project completion must be submitted to OLA within 30 days of completion.

NOTE: Authority cited: Section 15503, Government Code; and Sections 16009 and 39619.6, Education Code. Reference: Sections 49410, 49410.2 and 49410.7, Education Code.

HISTORY:

1. New Article 7 (Section 1867.2) filed 11-7-86; effective thirtieth day thereafter (Register 86, No. 45). For history of former Article 7, see Register 81, No. 18.

(Register 88, No. 53—12-27-88)

SUBGROUP 12. STATE SCHOOL DEFERRED MAINTENANCE

DETAILED ANALYSIS

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order, reflecting the district's total deferred maintenance needs, to accomplish the major repair or replacement workload annually over a five year period using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five-year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

NOTE: Authority cited: Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-15-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2-27-86; effective thirtieth day thereafter (Register 86, No. 9).
5. Amendment of subsections (a)(7) and (8) filed 12-15-86; effective thirtieth day thereafter (Register 88, No. 52).

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:

(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 98, Chapter 40/80 and has deposited into said fund an amount of local funds.

(Register 87, No. 17—4-25-87)

SUBGROUP 12. STATE SCHOOL DEFERRED MAINTENANCE

DETAILED ANALYSIS

Article 1. Definitions

1866. Definitions.

(a) In connection with the administration of the provisions of Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 23, Division 3, Title 2, Education Code and for the purpose of these regulations, the terms set forth below shall have the following meanings:

(1) The Act, Sections 39618 through 39621, above.

(2) Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.

(3) Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.

(4) Board. The State Allocation Board.

(5) District or Applicant School District. Any School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(6) Executive Officer. The Executive Officer of the State Allocation Board.

(7) Five Year Plan of Maintenance Needs. The district's plan in priority order, reflecting the district's total deferred maintenance needs, to accomplish the major repair or replacement workload annually over a five year period using the format to be supplied by the Executive Officer of the Board.

(8) Repair. Involves the work necessary to restore deteriorated or damaged plumbing, heating, air conditioning, electrical, roofing and floor systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes.

(9) Replacement. The work necessary to replace those school building systems itemized in subparagraph 8, above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

(10) Critical Project. A project at one school in the five-year plan which if not completed in one year could result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five-year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.

NOTE: Authority cited: Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2-27-86; effective thirtieth day thereafter (Register 86, No. 9).
5. Amendment of subsections (a) (7) and (8) filed 12-15-86; effective thirtieth day thereafter (Register 86, No. 52).

(Register 87, No. 17—4-25-87)

Article 2. Eligibility

1866.1. Prerequisites to Receiving an Apportionment.

(a) The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:

(1) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in Section 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.

(2) That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 3. Application Procedure

1866.2. Form of Application.

A request to the Board for an apportionment under the Act shall be transmitted to the Executive Officer for recommendations and presentation to the Board. Such request shall be in letter form signed by the Superintendent of the District and having attached thereto the district's five year plan of maintenance needs as prescribed by Section 39620 of the Education Code and these regulations.

1866.3. Filing and Review of Applications.

Applications for an apportionment shall be filed with the Executive Officer prior to April each year. All applications received by the applicable date, will be presented to a subsequent meeting of the Board for consideration in the distribution of State School Deferred Maintenance funds which are made available for the fiscal year. The Board, by the unanimous vote of the members present, can make an exception to the filing date.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 39620, Education Code.

HISTORY:

1. Amendment filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
2. Amendment filed 7-28-82; effective thirtieth day thereafter (Register 82, No. 31).

Article 4. Five Year Plan of Maintenance Needs

1866.4. Form of Five Year Plan of Maintenance Needs.

(a) Section 39620 of the Education Code establishes the requirement of filing with the Board a five year plan of the maintenance needs of the district.

(b) A sample format for the school district five year plan of maintenance needs, designed to provide the minimum necessary information required by the Board to make approval determinations, shall be supplied by the Executive Officer of the Board upon request. Major repair or replacement projects to be included in the plan must conform to those categories authorized in Section 39618 of the Act and these regulations. Assignment of priorities by the district should be made in such an order that will emphasize those project categories that would prevent further severe deterioration and/or damage to school facilities.

(c) Eligible items of major repair or replacement shall be limited to those school facility components which have approached or exceeded their normal life expectancy unless a history of continued repairs indicates a shortened life expectancy.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 5. Hardship Apportionment

1866.5. Apportionment of Hardship Funds from the State School Deferred Maintenance Fund.

(a) No district contribution beyond one-half of one percent of its total general and adult education funds budgeted for the fiscal year (excluding the amounts budgeted for capital outlay or debt service) shall be required for the first critical project of a district in any given fiscal year.

(b) A district contribution of 50% shall be required for the second critical project of a district in any given fiscal year to be made by one of the following methods:

(1) Cash contribution.

(2) An apportionment pursuant to Education Code Section 39619.5, provided that the district agrees to repay its 50% share of the additional critical projects as an offset of future apportionments allowed pursuant to Education Code Section 39619 in an amount equal to ½ of 1% of the district's current year budgeted General and Adult Education Funds exclusive of amounts budgeted for capital outlay or debt service per year for a period not to exceed five years or until the apportionment is repaid.

(c) A cash contribution of 50% shall be required by the district for each additional critical project, beyond two, of a district in any given fiscal year.

(d) For hardship apportionments made in or prior to the 1984/85 fiscal year, the State Allocation Board may waive the balance of any required offset provision from future apportionments made pursuant to Education Code Section 39619.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. Amendment filed 4-20-87; operative 5-20-87 (Register 87, No. 17).

1866.5.1. Prioritization of Critical Project Categories for Hardship Apportionments.

(a) In the event available funding is insufficient to fully fund all hardship requests in any given fiscal year, the Board shall utilize the following prioritized list to apportion funds for critical hardship projects:

Description of Projects	Priority No.
Roofing	1
Plumbing (Water/Sewer)	2
Heating	3
Air-Conditioning	4
Electrical	5
Underground Tanks	6
Wall Systems	7
Floor Systems	8
Paving	9
Other	10

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(c) Eligible items of major repair or replacement shall be limited to those school facility components which have approached or exceeded their normal life expectancy unless a history of continued repairs indicates a shortened life expectancy.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 5. Hardship Apportionment

1866.5. Apportionment of Hardship Funds from the State School Deferred Maintenance Fund.

(a) No district contribution beyond one-half of one percent of its total general and adult education funds budgeted for the fiscal year (excluding the amounts budgeted for capital outlay or debt service) shall be required for the first critical project of a district in any given fiscal year.

(b) A district contribution of 50% shall be required for the second critical project of a district in any given fiscal year to be made by one of the following methods:

(1) Cash contribution.

(2) An apportionment pursuant to Education Code Section 39619.5, provided that the district agrees to repay its 50% share of the additional critical projects as an offset of future apportionments allowed pursuant to Education Code Section 39619 in an amount equal to ½ of 1% of the district's current year budgeted General and Adult Education Funds exclusive of amounts budgeted for capital outlay or debt service per year for a period not to exceed five years or until the apportionment is repaid.

(c) A cash contribution of 50% shall be required by the district for each additional critical project, beyond two, of a district in any given fiscal year.

(d) For hardship apportionments made in or prior to the 1984/85 fiscal year, the State Allocation Board may waive the balance of any required offset provision from future apportionments made pursuant to Education Code Section 39619.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY:

1. Amendment filed 4-20-87; operative 5-20-87 (Register 87, No. 17).

(Register 87, No. 46—11-14-87)

1866.5.1. Prioritization of Critical Project Categories for Hardship Apportionments.

(a) In the event available funding is insufficient to fully fund all hardship requests in any given fiscal year, the Board shall utilize the following prioritized list to apportion funds for critical hardship projects:

Description of Projects	Priority No.
Underground Toxic/Contaminated Tank Clean-Up/Removal	1
Roofing	2
Plumbing (Water/Sewer)	3
Heating	4
Air-Conditioning	5
Electrical	6
Wall Systems	7
Floor Systems	8
Paving	9
Other	10

(b) The Board may make exceptions to the priorities on a case-by-case basis for the benefit of the pupils affected.

(c) The Board shall maintain a sufficient reserve for unexpected emergencies and ongoing cost increases.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17705 and 17714, Education Code. Reference: Sections 39618–39621, Education Code.

HISTORY:
1. New section filed 12-4-86; effective thirtieth day thereafter (Register 86, No. 49).
2. Amendment of subsection (a) filed 11-5-87; operative 12-5-87 (Register 87, No. 46).

1866.6. Method of Payment to School District.

(a) Each apportionment when ready for payment shall be certified by the Executive Officer to the State Controller who shall draw his warrant for such payment in the manner prescribed by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

Article 6. Expenditures

1866.7. Control of Expenditures.

Section 39618 (c) of the Education Code provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 39619 may be expended by the governing board for any purpose except those specified in Section 39618 (a) of the Education Code.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

§ 1865.83. Applicability of These Rules.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.84. Applicability of CEQA and Guidelines.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.85. Required Filing by a District.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.86. Categorical Exemptions.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.87. Notice of Exemption—Rejection by Executive Officer.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.88. Non-Exempt Projects—Initial Study.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.89. Negative Declaration—Requirements and Attachments.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.90. Negative Declaration—Rejection by Executive Officer If Not in Conformity with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.91. EIR—General Requirements.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.92. EIR Attachments.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.93. EIR for More Than One Project.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.94. EIR—Rejection by Executive Officer for Non-Conformity with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.95. EIR Evaluation by the Board.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

Subgroup 12. State School Deferred Maintenance

Article 1. Definitions

§ 1866. Definitions.

(a) In connection with the administration of the provisions of California Education Code (EC) Sections 17582 through 17588 and 17591 through 17592.5, inclusive, of Article 1, Chapter 4, Part 10.5, Division 1, Title 1, and for the purpose of these regulations, the terms set forth below shall have the following meanings:

"The Act" means EC Sections 17582 through 17588 and 17591 through 17592.5, above.

"Board" means the State Allocation Board.

"Complete Application" means a district has submitted with the application, all documents to the Office of Public School Construction (OPSC) that are required as identified in the General Information Section of the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02) and the OPSC has accepted and completed a preliminary approval review.

"Critical Project" shall have the meaning set forth in Section 1866.5.

"Deferred Maintenance" means the repair or replacement work performed on school facility components that is not performed on an annual or on-going basis but planned for the future and part of the *Five Year Plan*, Form SAB 40-20 (New 04/02).

"District or Applicant School District" shall mean an entity identified in Section 1866.1(a).

"Division of the State Architect" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety, and access compliance.

"Extreme Hardship Grant" means a grant provided by the State to complete the critical project, as provided by EC Section 17587 and Regulation Section 1866.5.2.

"Financial Test" shall have the meaning set forth in Section 1866.5(a).

"Five Year Plan" Shall have the meaning set forth in Section 1866.4.

"Matching Funds" means an amount of funds the district deposits into the "district deferred maintenance fund" to receive either a maximum or prorated basic grant.

"Maximum Basic Grant" means an amount of State funds apportioned by the Board for purposes of the *Five Year Plan*, Form SAB 40-20 (New 04/02). This amount is based on the formula specified in EC Section 17584(b).

"Prorated Basic Grant" means the prorated amount of the maximum basic grant apportioned by the Board due to insufficient funding for the Deferred Maintenance Program (DMP).

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the DMP.

"OPSC Deferred Maintenance Extreme Hardship Workload List" means a list of extreme hardship funding applications authorized by EC Section 17587 for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02) but not yet included on the DMP Extreme Hardship Unfunded List.

"OPSC Extreme Hardship Unfunded List" means a information list of unfunded critical projects awaiting an Extreme Hardship Grant under the provisions of the DMP.

"OPSC Modernization Workload List" means a list of School Facility Program (SFP) modernization projects for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Form SAB 50-01, *Enrollment Certification/Project*, (Revised 07/01); Form SAB 50-02, *Existing School Building Capacity*, (Revised 07/01); Form

SAB 50-03, *Eligibility Determination*, (Revised 07/01); and Form SAB 50-04, *Application for Funding*, (Revised 09/01), under the SFP.

"Repair" means the work necessary to restore deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes.

"Replacement" means the work necessary to replace those school building systems itemized in "Repair" above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

"Routine Maintenance" means the school facility component work performed on an annual or on-going basis each year to keep building facilities in proper operating condition.

"School Facility Program (SFP)" means the Leroy F. Green School Facilities Act of 1998.

"SFP Modernization Unfunded List" means an information list of unfunded modernization projects approved under the provisions of the SFP.

"Total Estimated Cost" means an estimated cost of the critical project on which the extreme hardship grant is calculated.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582-17592.5, Education Code.

HISTORY

1. New Subgroup 12 (Articles 1-6, Sections 1866-1866.10) filed 4-18-80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate o Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8-17-80.
2. Certificate of Compliance filed 6-26-80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2-27-86; effective thirtieth day thereafter (Register 86, No. 9).
5. Amendment of subsection (a)(7) and (8) filed 12-15-86; effective thirtieth day thereafter (Register 86, No. 52)
6. Amendment of section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 2. Eligibility to Receive DMP Grants

§ 1866.1. Prerequisites to Receiving a Basic or Extreme Hardship Grant.

The prerequisites to receiving a grant, as provided by the Act and these regulations, include the following:

(a) Operate as one of the following:

(1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or

(2) A County Superintendent of Schools (CSS) that serves any combination of kindergarten through twelfth grade pupils; or

(3) A regional occupational center identified in EC Section 17592.5; and

(b) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in EC Section 17582(a) and these regulations; and

(c) That the applicant school district has a Board approved *Five Year Plan*, Form SAB 40-20 (New 04/02) complying with Section 1866.4, which includes the fiscal year of funding.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584, 17587, 17591 and 17592.5, Education Code.

HISTORY

1. Amendment of article heading, section heading, section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 3. DMP Application Procedure

§ 1866.2. DMP Application for Basic Grant.

An eligible district seeking funding for a DMP Basic Grant shall complete and file with the OPSC, the *Five Year Plan*, Form SAB 40-20 (New 04/02), which is incorporated by reference.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17591, Education Code.

HISTORY

1. Amendment of article heading, section heading and section and new NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.3. DMP Application for Extreme Hardship Grant.

An eligible district seeking funding for a DMP extreme hardship grant shall complete and file with the OPSC, the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02), which is incorporated by reference.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. Amendment filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
2. Amendment filed 7-28-82; effective thirtieth day thereafter (Register 82, No. 31).
3. Amendment of section heading, section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 4. Basic Grant Request and Apportionment

§ 1866.4. Five Year Plan Requirements.

EC Section 17591 establishes the need of filing with the Board a five year plan for deferred maintenance needs of the district. The *Five Year Plan*, Form SAB 40-20, (New 04/02) is a summary of proposed projects the district plans on completing annually over the next five fiscal years using the basic grant. The fiscal year the plan commences is determined by the fiscal year in which it was filed. New and revised plans are accepted on a continuous basis for the current fiscal year up to the last working day in June. Revisions are not accepted for prior fiscal years.

(a) Under the following circumstances, a revised plan would need to be submitted to the OPSC:

(1) The plan has expired.

(2) Work will be performed that is not listed on the plan or at a school not listed on the plan.

(3) If work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.

(b) A district submitting a new plan or revising a plan under (a) above must be able to certify that the plans and proposals for expenditures of funds, listed on the *Five Year Plan*, Form SAB 40-20 (New 04/02) submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to EC Section 17584.1(a).

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584.1 and 17591, Education Code.

HISTORY

1. Amendment of article heading, section heading, section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.1. Permissible Use of the DMP Basic Grant.

The district may include on its *Five Year Plan*, Form SAB 40-20 (New 04/02) a repair or replacement project, provided it meets all the following criteria:

(a) Conforms to the deferred maintenance activities authorized in EC Section 17582(a) or these regulations, which has approached or exceeded its normal life expectancy or has a history of continued repairs indicating a shortened life expectancy, and;

(b) Performed at a district owned facility, which is used for school purposes. A district that is currently leasing relocatables from the State Relocatable Classroom Program may include deferred maintenance work on the *Five Year Plan*, Form SAB 40–20 (New 04/02) for these facilities.

(c) Facilities owned by a CSS or leased facilities that are required to be maintained by the CSS, which it is authorized to use pursuant to Article 3 commencing with EC Section 17280, Chapter 3, may be included on the *Five Year Plan*, Form SAB 40–20 (New 04/02).

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17280, 17582 and 17591, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.2. Calculation of Basic Grant and Apportionment of Basic Grant.

After July 1 each fiscal year, the Board shall apportion to districts a basic grant for the DMP. A maximum basic grant is calculated as stated for each of the following:

(a) School districts and regional occupational centers using the formula set forth in EC Section 17584(b).

(b) CSSs who meet the provisions of EC Sections 17584, 17591 and, if applicable, 17585, an amount equal to one dollar ($1.00) for each one dollar ($1.00) of local funds up to a maximum of one–half percent of the total general funds and adult education funds budgeted by the CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, debt service or revenues that are passed through to other local educational agencies, to the extent of funds legally available pursuant to EC Section 17080.

If sufficient State funding is not available, the Board shall apportion to all districts except those that are receiving a basic grant with an extreme hardship grant, a prorated amount of the maximum. This amount is known as the prorated basic grant.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 2553 and 17584, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.3. District Deposit of Matching Share.

To receive the basic grant pursuant to Section 1866.4.2, districts are required to deposit a matching share into their District Deferred Maintenance Fund established pursuant to EC Section 17582(a). The State will match this amount dollar–for–dollar not to exceed the basic grant apportioned by the Board. The district's deposit must be a cash contribution from any non–restricted fund, unmatched carryover pursuant to Section 1866.4.4, or from the district's restricted Ongoing and Major Maintenance Account.

If the district has established an Ongoing and Major Maintenance Account under the provisions of EC Section 17070.75(b)(1), any annual deposits in excess of 2 1/2 percent into that fund may be used towards the district's matching share. Districts may either:

(a) Report the excess amount in the Ongoing and Major Maintenance Account being used towards the match on the *Certification of Deposits*, Form SAB 40–21 (New 04/02), which is incorporated by reference. These funds are not available for eligible deferred maintenance projects listed on the *Five Year Plan*, Form SAB 40–20 (New 04/02), until transferred into the District Deferred Maintenance Fund.

(b) Transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share on the *Certification of Deposits*, Form SAB 40–21 (New 04/02). These funds are available to the district to perform work on the *Five Year Plan*, Form SAB 40–20 (New 04/02).

NOTE: Authority cited: Section 15503, Government Code Reference: Sections 17070.75, 17582 and 17584, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.4. Carryover of Unmatched State Funds.

Any funds deposited and not matched by the State can be carried over to the next fiscal year. A district can apply unexpended, unmatched balances past the next fiscal year under the provisions of EC Section 17583, and then reaffirm by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes.

Carryover that has been reported on the *Certification of Deposits*, Form SAB 40–21 (New 04/02) is considered matched and therefore cannot be applied as carryover in subsequent fiscal years.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582 and 17583, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.5. County Superintendents of Schools Funding Limitations.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 2553, 39618–39619.2 and 39620, Education Code; and Sections 15502–15503, Government Code.

HISTORY

1. New section filed 9–8–89 as an emergency; operative 9–8–89 (Register 89, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–8–90.
2. Certificate of Compliance including amendment transmitted to OAL 12–1–89 and filed 12–29–89 (Register 90, No. 2).
3. Repealer of article 4.5 heading and repealer of section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.6. Release of State Funds.

The CSSs shall report the district's deposit on the *Certification of Deposits*, Form SAB 40–21 (New 04/02). The Form is due to the OPSC no later than 60 days after the maximum or prorated basic grant is apportioned by the Board. Any *Certification of Deposits*, Form SAB 40–21 (New 04/02), received after 60 days will be brought to the Board on a case–by–case basis to determine if the funds will be released.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17584, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.7. Failure to Deposit Matching Funds.

A total deposit less than the maximum amount will require the district to comply with the reporting requirements of EC Section 17584.1. The OPSC will present to the Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17584 and 17584.1, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 5. Extreme Hardship Grant Application and Apportionment

§ 1866.5. Eligibility Requirements.

A district may be eligible for an extreme hardship grant, provided the district demonstrates to the Board that there is a critical project on the *Five Year Plan*, Form SAB 40–20 (New 04/02), which meets all the following criteria:

(a) Financial Test

(1) The total estimated cost of the critical project is greater than two times the district's maximum basic grant.

(b) Health and Safety Test

(1) The project if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

An extreme hardship grant is available to repair or replace an existing school building component, authorized by EC Section 17582 or these

regulations, located within existing district owned classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space located on a school site), if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17587 and 17588, Education Code.

HISTORY

1. Amendment filed 4-20-87; operative 5-20-87 (Register 87, No. 17).
2. Amendment of article and section headings, repealer and new section and amendment of NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.1. Application Submittals.

(a) For the OPSC to deem an application complete, a district requesting an extreme hardship grant shall submit to the OPSC an *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02), along with all documents requested in the General Information Section of the Form. Additional documentation identifying how the request meets the requirements of EC Section 17587 may be required.

(b) More than one *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02), may be submitted by a district in a fiscal year provided each project meets the eligibility requirements set forth in Section 1866.5. The OPSC will present projects to the Board in the order of date received. Complete applications are accepted on a continuous basis; those received prior to the last working day in June are ensured consideration for funding by the Board in the next funding cycle.

(c) The district shall submit a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02). If the extreme hardship grant request contains work on relocatable facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility. The Board will approve reasonable and appropriate funds to mitigate the conditions, which makes the project qualify as a hardship under EC Section 17587, if the costs are consistent with the Saylor Current Construction Costs.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 12-4-86; effective thirtieth day thereafter (Register 86, No. 49).
2. Amendment of subsection (a) filed 11-5-87; operative 12-5-87 (Register 87, No. 46).
3. Renumbering of former section 1866.5.1 to section 1866.5.3 and new section 1866.5.1 filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.2. Determination of Extreme Hardship Grant Amount and District Contribution.

(a) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum Basic Grant and State matching share that is less than $1,000,000, shall be determined by either of the following:

(1) For a total project cost that is less than $1,000,000, the extreme hardship grant will be determined by taking the total project cost less the district's maximum basic grant, less the State's matching share.

(2) For a total project cost that exceeds $1,000,000, the extreme hardship grant will be determined by taking $1,000,000 less the district's maximum basic grant, less the State's matching share. The total of that amount plus 50 percent of any project costs above $1,000,000 will be the State's hardship contribution. The district's contribution will be 50 percent of the remaining excess above $1,000,000 and the district's maximum basic grant.

(b) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum basic grant and State matching share that exceeds $1,000,000, shall be determined by the following:

(1) From the total project cost deduct the district's maximum Basic Grant and State matching share. The remaining amount will be divided in half between the district and the State.

The district shall be required to contribute the maximum basic grant and State's matching share at the time the Board apportions funding for the project.

(c) An extreme hardship grant for each additional hardship project beyond one in any given fiscal year shall be determined by dividing the total project cost in half. A cash contribution of 50 percent will be required from the district.

(d) A district with only one school may include other major repair or replacement work deemed essential for basic utilization and functioning of the school, without being subject to subsection (c).

If a district receives an unfunded approval pursuant to Section 1866.5.3, the extreme hardship grant will be an estimate based on the current maximum basic grant and state matching share and will be re-calculated using the maximum basic grant and state matching share at the time of funding by the Board.

NOTE: Authority cited: Section 15503, Government Code; and Section 17588, Education Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.3. Project Priorities Due to Insufficient State Funds.

(a) When funds are not available, project requests that meet the criteria for funding are presented to the Board on a continuous basis throughout the fiscal year and are included on an unfunded list based on the date the complete critical hardship application was received by the OPSC.

(b) The Board shall utilize the following prioritized list to apportion extreme hardship grants for critical projects when funds become available:

Priority Description	*Priority No.*
A project that meets the requirements of (c) below.	1
All other eligible projects as defined in EC Section 17582(a) or these regulations.	2

(c) At the time the complete application is filed with the OPSC, a district requesting Priority One status shall submit a resolution passed by the district's governing board that includes the following:

(1) Describe in detail the health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.

(2) Identify the facility or facilities on the school site that will be affected by the closure and the dates of closure.

(3) Identify how the board plans on housing the pupils until the facility can be re-opened.

An assessment will be made by the OPSC and the Board to determine if the critical project meets the Priority One requirements.

(d) When funds become available, the requests included on the OPSC Extreme Hardship Unfunded List will receive funding in the following order, provided the project still meets Section 1866.5(a):

(1) Increases, if the original request has already received an apportionment.

(2) Priority One Projects.

(3) All other eligible projects as defined in EC Section 17582(a) or these regulations.

Within each category, projects will be funded in the order the project was placed on the unfunded list. Projects that do not receive funding will remain on the unfunded list for a future funding cycle.

(e) The Board may make exceptions to the priorities on a case-by-case basis for the benefit of the pupils affected.

(f) The Board shall maintain a sufficient reserve for unexpected emergencies and on-going cost increases.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. Renumbering of former section 1866.5.1 to section 1866.5.3, including amendment of section heading, section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.4. Reimbursement.

(a) Reimbursement of eligible architect/engineering expenditures will be allowed up to five months prior to the date that the hardship project is accepted for processing by the OPSC.

(b) After written determination by the OPSC that the project is approvable, reimbursement of eligible construction expenditures will be allowed. If a district incurs construction costs prior to that date, all construction expenditures for the project will not be reimbursed.

(c) In the case where a project meets the criteria of priority one hardship pursuant to Section 1866.5.3(c), districts can contact the OPSC to request an expedited determination of the eligibility of the hardship project. The OPSC will respond within five working days. If OPSC does not respond within five working days, the project will be deemed approvable for eligible construction expenditures.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.5. Permissible Uses of Extreme Hardship Grant Funds.

The extreme hardship grant shall be used for the critical project approved by the Board and only expenditures relating to the minimum work necessary to mitigate the problem shall be recognized as eligible project costs. Architect or engineer's fees up to 12 percent of the construction costs will be deemed eligible as well as reasonable testing, inspection, and plan checking fees. The grant may not be used for any of the following:

(a) Construction costs incurred prior to the OPSC determining that the project is approvable, except for costs associated with temporary measures necessary to immediately mitigate the problem.

(b) Expenditures required by local mandate that are not prescribed in State law.

(c) Asbestos abatement, sampling, testing necessary as a result of a SFP modernization project or a Federal Renovation Program project.

(d) Non-owned facilities.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.6. Ongoing Project Cost Increase.

A district may request an increase in funding for ongoing project costs under either one of the following conditions:

(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. The OPSC may request that the project be re-bid prior to processing the increase for funding.

(b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.

Any Board approved increase to the extreme hardship grant will be subject to the requirements of Section 1866.5.2.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.7. Release of State Funds.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal by the district of the *Fund Release Authorization*, Form SAB 40-23 (New 04/02), which is incorporated by reference, and supporting documentation requested in the General Instruction Section of the form. A district must submit the *Fund Release Authorization*, Form SAB 40-23 (New 04/02), within one year of the apportionment of the extreme hardship grant for the project. After reviewing the submittal, the OPSC may request to the Board, based on the supporting documentation, that the extreme hardship grant be adjusted to reflect the actual project costs.

Should the district only provide documentation to support the release of funding for a portion of the project, the OPSC shall prorate the fund release based on the supporting documentation.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.8. Progress Report and Time Limit on Extreme Hardship Grant Apportionment.

Within one year of the extreme hardship grant apportionment by the Board the district shall:

(a) Complete the critical project; and

(b) Submit the *Fund Release Authorization*, Form SAB 40-23 (New 04/02) and supporting documentation pursuant to Section 1866.5.7.

(c) If (b) above has not been met within six months of Board apportionment, the district is required to submit a progress report in the form of a narrative to the OPSC. The report shall contain a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, the entire extreme hardship grant shall be presented to the Board for rescission and, if applicable, the portion of the Basic Grant the district received due to the extreme hardship grant funding unless the district submits a request for time extension.

(d) The Board may approve a time extension for the project based on the following:

(1) A provision for a six-month time extension if the district has completed the plans and they have been submitted to the DSA for approval.

(2) A provision for a six-month time extension when the plans are DSA approved and the project is currently out to bid.

(3) A provision for up to a nine-month time extension when the district can demonstrate to the Board that circumstances exists beyond the district's control.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.9. Exemptions to District Contribution.

Monitoring costs required by a public agency relating to the removal of an underground toxic tank that cannot be funded by any other source, shall be exempted from a project's total cost for the purpose of determining the district contribution as required in Section 1866.5.2(a)(2) or (b)(1).

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.6. Method of Payment to School District.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618-39621, Education Code.

HISTORY
1. Repealer filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 6. Miscellaneous

§ 1866.7. Control of Expenditures.

EC Section 17582(c) provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to EC Section 17584(a) or (b) may be expended by the governing board for any purpose except those specified in EC Section 17582(a).

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17582, Education Code.

HISTORY
1. Amendment of article heading, section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.8. Expenditures by Districts Subject to Public Contract Code.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in EC Sections 17582 and 17587 must comply with all laws, specifically the Public Contract Code (PCC) and the California Code of Regulations (Title 24). An "emergency" contract must be awarded under the provisions of the PCC Section 20113.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584 and 17587, Education Code.

HISTORY
1. Amendment of section heading, section and NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.9. Program Reporting Requirements.

A district receiving funds in accordance with Section 1866.5.2 shall submit an expenditure report from the district on the *Expenditure Report*, Form SAB 40-24 (New 04/02), which is incorporated by reference. The expenditure report shall be due no later than two years from the date any funds were released.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY
1. Amendment of section heading, repealer and new section and amendment of NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.9.1. Expenditure Audit.

When the district has received funds pursuant to Section 1866.5.2, the project will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of EC Section 17582(a), 17587, and Section 1866.5.5.

When the OPSC receives the final expenditure report from the district on the *Expenditure Report*, Form SAB 40-24 (New 04/02), an audit of the expenditures by the OPSC shall commence within one year of the report for all extreme hardship grant apportionments made by the Board after these regulations become effective. The OPSC shall complete the audit within six months, unless additional information requested by the district has not been received.

The district shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY
1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582-17592.5, Education Code.

HISTORY
1. Amendment of NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.11. Payment and Performance Bonds.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618-39621, Education Code.

HISTORY
1. New section filed 6-26-80; effective thirtieth day thereafter (Register 80, No. 26). 2. Repealer filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
2. Repealer filed 4-30-81; effective thirtieth day thereafter (Register 81, No. 18).
3. Amendment of NOTE filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.12. Earned Interest on DMP Grants.

Earned interest on State funds received in accordance with the Act shall be treated as follows:

(a) One half of any interest earned on DMP grant funds provided pursuant to Section 1866.4.2 may be applied towards the district match in any given fiscal year.

(b) All interest earned on DMP grant funds provided pursuant to Section 1866.5 shall be applied to eligible project costs for the project pursuant to Section 1866.5.5 or returned to the State.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584, and 17587, Education Code.

HISTORY
1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.13. Duplication of Applications.

If the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization project must be withdrawn prior to the release of any extreme hardship grants to the district.

If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's *Five Year Plan*, Form SAB 40-20, (New 04/02) pursuant to Education Code Section 17591, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17587 and 17591, Education Code.

HISTORY
1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.14. Amending and Withdrawal of Extreme Hardship Funding Applications.

The district may not amend an *Extreme Hardship Funding Application*, Form SAB 40-22, (New 04/02) submitted to the OPSC that has not received Board approval to increase the scope of work. At the option of the district, the funding application may be withdrawn and resubmitted to include the additional work. The district must request that the applica-

tion be withdrawn and removed from the OPSC Deferred Maintenance Extreme Hardship Workload List. The resubmitted application will receive a new processing date by the OPSC.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1-13-2003; operative 1-13-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 7. Asbestos Abatement

§ 1867.2. Matching Funds.

(a) The State Allocation Board will fund 50% of each eligible district's abatement projects. The state Allocation Board may increase the apportionment to a district, upon request, if the required district contribution shown below in excess of 1/2 of 1% of the district's budgeted General Fund and Adult Education Fund, less capital outlay and debt service.

A.D.A.	*Required District Contribution*
4,499 or less	25% of project cost
4,500 or more	50% of project cost

In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund the lesser of the 1/2 of 1% figure each year for a period of five years or the full percentage of the required district contribution. Installment payments will cease at the time the required district contribution is attained or at the end of five years, whichever occurs first.

(b) Funds may be apportioned on estimated project cost, however, any savings realized after the project is completed will revert to the State Asbestos Abatement Fund. A district certification of project completion must be submitted to OAL within 30 days of completion.

NOTE: Authority cited: Section 15503, Government Code; and Sections 16009 and 39619.6, Education Code. Reference: Sections 49410, 49410.2 and 49410.7, Education Code.

HISTORY

1. New Article 7 (Section 1867.2) filed 11-7-86; effective thirtieth day thereafter (Register 86, No. 45). For history of former Article 7, see Register 81, No. 18.

Article 8. Child Care and Development

§ 1868.1. Extended Day-Care Definitions.

(a) Board—The State Allocation Board.

(b) Eligible Contracting Agency—A licensed extended day-care services entity under contract with the Superintendent of Public Instruction.

(c) Relocatable Facility for Lease—A factory-built structure constructed in accordance with performance specifications prepared by the State Allocation Board.

(d) Child Care and Development Facility—Any building or part thereof in which child care and development services are provided.

(e) Authorized Agent—A person authorized to act and execute a lease on behalf of the governing body of the extended day-care services agency.

NOTE: Authority cited: Sections 15463 and 15503, Government Code. Reference: Sections 8277.7, 8493-8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3-3-87; effective thirtieth day thereafter (Register 87, No.10).

§ 1868.2. Relocatable Facilities.

(a) Relocatable facilities leased to qualifying child care and development contracting agencies shall be utilized solely for the operation of a child care and development facility.

(b) Minor renovations and repairs may be performed to relocatable facilities if the work performed is the minimum amount necessary to comply with State and local health and safety standards and licensing requirements. The dollar amount may not exceed $2,500.00 per facility. Any work necessary in excess of this amount must be approved by the Board.

(c) If the Board determines that the need for an existing relocatable child care facility has ceased, it may take possession of the facility and dispose of it in the manner most advantageous to the State.

NOTE: Authority cited: Sections 15463 and 15503, Government Code. Reference: Sections 8277.7, 8493-8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3-3-87; effective thirtieth day thereafter (Register 87, No.10).

§ 1868.3. Cost Reimbursement for Initial Utility Services Installation (Non-State Funded Extended Day Child Care Facilities).

Upon receipt of a request first submitted to and approved by the Superintendent of Public Instruction (as required by Education Code Section 8478), the Board may reimburse extended day care agencies for the costs of initial utility service installation when such facilities have not been acquired with State funds. Utility services may include but are not limited to water, sewer, electricity, telephone and fuel supplies from the nearest point of connection to the child care facility.

Reimbursement for initial utility services installation is limited to:

(a) such costs incurred after September 24, 1987.

(b) such costs incurred after January 1, 1986 in the case of relocatable facilities acquired by public, nonprofit agencies formed in 1984.

Payment of the reimbursement is contingent upon available State Child Care Facilities Fund resources at the time the request is received by the State Allocation Board.

NOTE: Authority cited: Sections 15463, 15490 and 15502, Government Code; and Sections 8477, 8477.3 and 8478, Education Code. Reference: Sections 8477, 8477.3 and 8478, Education Code.

HISTORY

1. New section filed 8-15-88; operative 9-14-88 (Register 88, No. 34).

§ 1869.1. Definitions.

(a) Board—The State Allocation Board.

(b) Eligible Agency

(1) Contracting Agency—A child care and development program (except for those providing extended day-care services) which is under contract with the Department of Education or will be under contract prior to the expenditure of any funds.

(2) Non-contracting Agency—A private nonsectarian child care and development program not under contract with the Department of Education and not providing extended day-care services.

(c) Authorized Agent—A person authorized to act and execute a lease or loan agreement on behalf of the governing body of the child care and development agency.

(d) Child Care and Development Facility—Any building or part thereof in which child care and development services are provided.

(e) Relocatable Facility for Lease—A factory-built structure constructed in accordance with performance specifications prepared by the Board.

NOTE: Authority cited: Sections 15463, 15490, 15502 and 15503, Government Code. Reference: Sections 8493-8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3-3-87; effective thirtieth day thereafter (Register 87, No.10).

§ 1869.2. Loan for Renovation.

(a)A recipient of a loan for renovation shall agree to use the renovated facility for the purpose of child care and development during the specified loan period or longer.

(b)The maximum loan shall not exceed $50,000.00 per eligible facility.

(c)The loan period shall be 3 years for loans from $1.00 to $30,000.00, 4 years for loans from $30,001.00 to $40,000.00 and 5 years for loans from $40,001.00 to $50,000.00.

(d)Loan payments shall be $1.00 per year for the life of the loan.

(e)If a loan recipient ceases to use the facility for the purposes of child care and development prior to the specified loan period, the Board shall

Hearing Date: October 27, 2011
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ITEM __
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7 as added or amended by Statutes 1979, Chapter 282, Statutes 1980, Chapters 40 and1354, Statutes 1981, Chapters 371, 649 and 1093, Statutes 1982, Chapter 525, Statutes 1983, Chapters 753 and 800, Statutes 1984, Chapters 1234 and 1751, Statutes 1985, Chapter 759 and 1587, Statutes 1986, Chapters 886, 1258 and 1451, Statutes 1987, Chapters 917 and 1254, Statutes 1989, Chapter 83 and 711, Statutes 1990, Chapter 1263, Statutes 1996, Chapter 277, Statutes 1999, Chapter 390, and Statutes 2002, Chapters 1075 and 1084

Title 2, California Code of Regulations Sections 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2 as added or amended by Registers 80-16, 80-26, 81.18, 82-31, 86-9, 86-45, 86-49, 86-52, 87-17, 87-46 and 03-03

Deferred Maintenance Program Handbook of 2003

Deferred Maintenance Programs

(02-TC-44)

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This test claim addresses activities required as a condition of participation in a state grant program: the Deferred Maintenance Program (DMP). The DMP was established to assist school districts in maintaining school buildings. Any K-12 school district or county superintendent of schools may choose to participate in the DMP by establishing a "district deferred maintenance account" and seeking state matching funds to finance major repair or replacement of plumbing, heating, air conditioning, electrical, roofing and floor systems and the exterior and interior painting of school buildings, or such other items of maintenance as may be approved by the State Allocation Board (SAB). As a condition of participating in the program, school districts are required to comply with certain program and accounting requirements.

Procedural History

This test claim was filed with the Commission on June 27, 2003. The Commission received comments and responses to comments on the test claim from the claimant, the Office of Public School Construction (OPSC), the Department of Education (DOE) and the Department of Finance (DOF).

Positions of the Parties and Interested Parties

Claimant's Position

Claimant alleges that the test claim statutes, regulations, and alleged executive order impose the following activities which are new and reimbursable under article XIII B, section 6 of the California Constitution and which generally require school districts and county superintendents to do the following:

- Establish the district deferred maintenance fund and appropriate district funds to it;
- Demonstrate eligibility and prepare and submit requests for state matching funds;
- Plan for and report on the use of the funds; and
- Comply with accounting requirements related to the use of DMP funds.[1]

Claimant argues that the requirements of the DMP are not discretionary and that bypassing matching funds is not a viable option.[2]

Department of Finance's Position

DOF states that a school district's participation in the State's DMP is the result of a discretionary action taken by the governing board of the district and is not state-mandated, therefore this test claim should be denied.[3]

Department of Education's Position

DOE asserts that the test claim statutes do not impose a mandated program.[4] Rather, school districts elect to participate in this program to receive funding for deferred maintenance and for the removal and containment of asbestos or lead.[5] Any requirements regarding this program are applicable only after districts elect to participate in the program.[6]

Office of Public School Construction Position

OPSC contends that this test should be denied because:

- Participation in the DMP is voluntary and the program elements described in the test claim are only required if a district chooses to participate in the program.[7]
- Government Code section 17556(d) precludes the Commission from finding costs mandated by the State because districts have the authority to meet program costs through the passage of local bonds, developer fees and other revenue expenses.[8]

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[1] Claimant, test claim, p.p. 55-68.

[2] Claimant, response to DOF's comments on the test claim, dated October 10, 2003, p.p. 2-4.

[3] DOF, comments on the test claim, September 15, 2003, p. 1.

[4] DOE, comments on the test claim, August 11, 2003, p. 2.

[5] *Ibid*.

[6] *Ibid*.

[7] OPSC, comments on the test claim, August 11, 2003, p. 1.

- Funds are appropriated for DMP annually, primarily from the following three sources:
  - Excess repayments from the State School Building Aid Program (SSBAP)
  - The State School Site Utilization Fund, and
  - Appropriations in the Budget Act.[9]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local governments 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.[10]

Claims

The following chart provides a brief summary of the claims and issues raised by the claimant, and staff's recommendation.

Claim	Description	Issues	Staff Recommendation
The Deferred Maintenance Program Handbook of 2003	A handbook prepared by OPSC that provides an overview of the DMP.	Claimant alleges this handbook imposes state-mandated costs.	*Denied*: The handbook is not an executive order within the meaning of Government Code section 17516 and is not subject to article XIII B, section 6 of the California Constitution.
Education Code Sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7 and Title 2, California Code of Regulations Sections 1866, 1866.1,	These code sections and regulations impose requirements on districts and county superintendents of public instruction that	Claimant alleges these code sections and regulations impose state-	*Denied*: The activities required by the test claim statutes and regulations are downstream requirements of a district's or

[8] *Id*, p. 2.

[9] OPSC, comments on the test claim, August 11, 2003, p. 3.

[10] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2	choose to participate in the DMP.	mandated costs.	superintendent's discretionary decision to participate in the DMP and under the analysis in *Kern*, do not impose a state-mandated program.

Analysis

Staff finds that the Deferred Maintenance Program Handbook of 2003 is not an executive order. An executive order is "any order, plan, requirement, rule or regulation" issued by the Governor or any official serving at the pleasure of the Governor.[11] Although the above-mentioned handbook is issued by a state agency director who serves at the pleasure of the Governor, it does not impose an "order, plan, requirement, rule or regulation" and therefore is not subject to article XIII B, section 6 of the California Constitution.

Staff finds that the test claim statutes and regulations do not impose a state-mandated program on school districts or county superintendents of schools because all the requirements are imposed as a condition of establishing a district deferred maintenance fund and seeking matching funds from the state DMP. Therefore, the requirements of the test claim statutes and regulations are downstream requirements of the local discretionary decision to participate in the DMP and, under the analysis in *Department of Finance v. Commission on State Mandates* (*Kern*),[12] do not impose a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff finds that Education Code sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7;
Title 2, California Code of Regulations Sections 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2; and the Deferred Maintenance Program Handbook of 2003 do not impose a reimbursable state-mandated program for the following reasons:

1. The Deferred Maintenance Program Handbook of 2003 does not impose any requirements and is not a plan, but rather conveys an overview of what is required by statutes and regulations. Therefore, it is not an executive order within the meaning of Government Code section 17516 and not subject to article XIII B, section 6 of the California Constitution.
2. The requirements of the test claim statutes and regulations are only required as a condition of establishing a district deferred maintenance fund and seeking and receiving matching funds from the State DMP. Under the analysis in *Kern*, the requirements are downstream requirements of a district's discretionary decision to

[11] Government Code section 17516.

[12] (2003) 30 Cal.4th 727

participate in the program and do not constitute a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and deny this test claim.

STAFF ANALYSIS

Claimant

Clovis Unified School District

Chronology

06/27/2003	Claimant, Clovis Unified School District, filed the test claim with the Commission on State Mandates (Commission)[13]
07/15/2003	Commission staff issued a completeness review letter for the test claim and requested comments from state agencies
08/11/2003	The Office of Public School Construction (OPSC) submitted comments on the test claim
08/11/2003	The Department of Education (DOE) submitted comments on the test claim
08/14/2011	Department of Finance (DOF) requested an extension to file comments on test claim
08/18/2003	Commission staff granted DOF an extension to September 15, 2003 to file comments on the test claim
09/13/2003	Claimant submitted a response to OPSC's comments on test claim
09/15/2003	DOF submitted comments on the test claim
10/10/2003	Claimant submitted a response to DOF's comments on test claim
11/26/2007	Claimant submitted a supplemental filing on test claim
06/04/2008	Claimant submitted a supplemental filing on test claim

I. Introduction

This test claim addresses activities required as a condition of participation in a state grant program: the Deferred Maintenance Program (DMP). Assembly Bill 8 (Stats. 1979, ch. 282) established the DMP to assist school districts in maintaining school buildings. Any K-12 school district or county superintendent of schools may choose to participate in the DMP by establishing a "district deferred maintenance account" and complying with statutory and regulatory requirements of the program. This account can be used to finance major repair or replacement of plumbing, heating, air conditioning, electrical, roofing and floor systems and the exterior and interior painting of school buildings, or such other items of maintenance as may be approved by the State Allocation Board (SAB). In order to qualify for this program, a district must establish a five-year deferred maintenance plan approved by the SAB and meet specified accounting requirements.

Generally, the SAB apportions to eligible school districts one dollar for each district dollar deposited in the district deferred maintenance account, up to a maximum of one-half percent of the district's total annual general fund budget exclusive of capital outlay or debt service.

[13] The filing date of June 27, 2003, establishes the potential period of reimbursement for this test claim beginning on July 1, 2001.

However, if a district meets the extreme hardship criteria in Education Code section 17587, SAB may apportion up to 100 percent of the district's maintenance cost and may waive repayment by the district of any state loan that had been previously issued to the district for building school facilities. AB 8 established in the State Treasury a State School Deferred Maintenance Fund which is appropriated for this purpose. This fund receives continuous appropriations from the excess annual payments by school districts on state loans under the State School Building Aid Laws of 1949 and 1952 and from appropriations in the annual state budget act.[14]

The test claim statutes and regulations for the program generally:

1. Authorize schools district to establish a district deferred maintenance fund and, if a district chooses to establish such a fund, require the district to:
    a. Annually appropriate district funds to the deferred maintenance fund equal to the amount of state matching funds (this requirement may be waived in whole or in part if the district is an extreme hardship district); or
    b. Provide a report to the Legislature explaining why it did not appropriate funds and how they intend to meet their deferred maintenance needs;
2. Authorize school districts to apply for state matching funds, and if a district chooses to apply for such funds, require the district to:
    a. Demonstrate eligibility and prepare and submit requests for state matching funds;
    b. Plan for and report on the use of the funds;
    c. Discuss the plans in a regularly scheduled public hearing; and
    d. Comply with accounting requirements related to the use of DMP funds.

Districts apply to the SAB for funding for deferred maintenance in the form and manner specified by the test claim statutes and regulations. General information about the program and application process is also provided in a publication of the OPSC entitled "The Deferred Maintenance Program Handbook."

[14] Note that recent amendments to the DMP statutes reduce the requirements of the program as follows: add a flexibility clause allowing districts to use the funding for "...any educational purpose" through 2013; deem all districts to be in compliance with program and funding requirements through 2014; temporarily reduce state funding for the program; suspend funding for new extreme hardship projects until July 1, 2013; suspend the district matching share requirement from fiscal years 2008/09 through 2012/13; suspend the requirement for county offices of education to certify to deposits for district matching funds; and suspend the requirement for Certification of Deposits (Form SAB 40-21), for 2007/08 through 2011/12. See Statutes 2009, chapter 12 (SBX3 4 – Ducheny) and Statutes 2009, chapter 2 (ABX4 2– Evans). These amendments are not included in this test claim.

II. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant asserts that that the Deferred Maintenance Program Handbook of January 2003 is an "Executive Order" as defined in Government Code section 17516.[15] The Handbook, together with the statutes, Education Code sections, and regulations referenced in the test claim result in school districts incurring costs mandated by the state, as defined in Government Code section 17514.[16] Claimant alleges that the test claim statutes, regulations, and alleged executive order impose the following activities which are new and reimbursable under article XIII B, section 6 of the California Constitution and which generally require school districts and county superintendents to do the following:

- Establish the district deferred maintenance fund and appropriate district matching funds to it;
- Demonstrate eligibility and prepare and submit requests for state matching funds and additional apportionments, if applicable;
- Plan for and discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing;
- Submit a report to the Legislature and others in any year that the school district does not set aside specified district matching funds and make the report available to the public;
- Comply with all of the applicable statutory and regulatory requirements and SAB polices for the apportionment and release of funds;
- Report on the use of the funds; and
- Comply with accounting requirements related to the use of DMP funds.[17]

B. Department of Finance's Position

DOF states that a school district's participation in the state's deferred maintenance program is the result of a discretionary action taken by the governing board of the district.[18] DOF asserts that the cited state laws do not create a reimbursable program; therefore the test claim should be denied.[19] Specifically, DOF states:

> As noted in the CUSD's test claim, Education Code section 17582 states, "the governing board of each school may establish a restricted fund to be known as the 'district deferred maintenance fund' for the purpose of major repair and replacement of plumbing, heating, air conditioning, electrical, roofing…" (underlining added).

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[15] Claimant, test claim, p. 55.

[16] *Ibid*.

[17] Claimant, test claim, p.p. 55-68; for a detailed list of activities alleged see pages 55-68 of the test claim.

[18] DOF, comments on the test claim, September 15, 2003, p. 1.

[19] *Ibid*.

> While a majority of school districts elect to participate in the program each year, there are some school districts that elect not to participate in the program. Thus, school district's participation in the program is due to a discretionary action taken by the school district; therefore it is not a State-mandated activity. Further, we note that the Deferred Maintenance Handbook of January 2003, which CUSD's [sic] declared an "Executive Order as defined in [sic] Government Code Section 17516["] in the test claim, and the Education Code sections and regulations referenced in the test claim <u>are applicable only after school districts elect to participate in the program.</u>[20]

(Emphasis in the original.)

C. Department of Education's Position

DOE asserts that the test claim statutes do not impose a mandated program.[21] Rather, school districts elect to participate in this program to receive funding for deferred maintenance and for the removal and containment of asbestos or lead.[22] Any requirements regarding this program are applicable only after districts elect to participate in the program.[23]

D. Office of Public School Construction's Position

OPSC contends that:

> Participation in the DMP, established through Education Code…Sections 17582 through 17558 and 17591 through 17592.5, is voluntary on the part of school districts. [Education Code] section 17582 states that "…a district may establish an account to be known as the…district deferred maintenance account…" No requirement is made in statute that a district …establish this account and therefore participate in the program. Districts may choose to maintain facilities through the use of district raised funds. The program elements described in the test claim are only required if a district chooses to participate in the program. Therefore, it is our opinion that the declaration on page 55 of the test claim that the DMP Handbook is an "Executive Order" as defined by Government Code Section 17516 is unfounded, as it only applies to districts choosing to participate in the DMP.[24]

Additionally, OPSC concludes that Government Code section 17556(d) precludes the Commission from finding costs mandated by the State because districts have the authority to meet program costs through the passage of local bonds, developer fees for capital outlay needs, and other revenue sources.[25]

Finally, OPSC asserts that State funds are appropriated for DMP annually; primarily from the following three sources:

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[20] *Ibid*, underlining in the original.

[21] DOE, comments on the test claim, August 11, 2003, p. 2.

[22] *Ibid*.

[23] *Ibid*.

[24] OPSC, comments on the test claim, August 11, 2003, p. 1.

[25] *Id*, p. 2.

- Excess repayments from the State School Building Aid Program (SSBAP)
- State School Site Utilization Fund, and
- Appropriations in the Budget Act.[26]

The 2001/2002 and 2002/2003 budget years had the following available funds for the program:

2001/2002 Fiscal Year

SSBAP	$15, 566,143
Site Utilization	$2,368,921
2002/2003 Budget Act	$205,548,000
Total	$223,483,064

2002/2003Fiscal Year

SSBAP	$13,952,845
Estimated Site Utilization	$2,000,000
2002/2003 Budget Act	$76,818,000
Total	$92,770,845[27]

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[28] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[29]

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.[30]

[26] OPSC, comments on the test claim, *supra*, p. 3.

[27] *Ibid.*

[28] *County of San Diego, supra,* 15 Cal.4th 68, 81.

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

[30] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[31]
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.[32]
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. [33]

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.[34] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[35] 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."[36]

A. The Deferred Maintenance Program Handbook of 2003 is not an Executive Order Subject to Article XIII B, Section 6.

Staff finds that the Deferred Maintenance Program Handbook of 2003 is not an executive order within the meaning of Government Code section 17516. That section defines an executive order as "any order, plan, requirement, rule or regulation" issued by the Governor or any official serving at the pleasure of the Governor. Although the above-mentioned handbook is issued by a state agency director who serves at the pleasure of the Governor, it does not impose an "order, plan, requirement, rule or regulation." The Deferred Maintenance Program Handbook of January 2003 was developed by OPSC to "assist school districts in applying for and obtaining 'grant' funds for the purposes of performing deferred maintenance work on school facilities."[37]

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[31] *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).

[32] *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.

[33] *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.

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

[35] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[36] *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.

[37] Office of Public School Construction, Deferred Maintenance Program Handbook, 2003, p. iii.

According to OPSC, "it is intended to provide an overview of the program for use by school districts, architects, and other interested parties on how a district or county superintendent of schools becomes eligible for and applies for the two different types of state funding available."[38] Importantly, the Handbook directs the reader to the DMP regulations for detailed information on the "application process, project type, or the eligibility of expenditures" and for "complete project specific information."[39]

Because the handbook does not impose any requirements and is not a plan, but rather conveys an overview of what is required by statutes and regulations, it is not an executive order. The handbook merely provides an overview of the program established in statute and regulation, summarizing requirements that have been established pursuant to statutory and regulatory provisions, including the test claim statutes and test claim regulations. It does not add any additional requirements above what is required by the relevant statutes and regulations. Moreover, claimant's "statement of the claim" on pages 55-68 of the test claim does not allege that any specific activities are imposed by the handbook. School districts may refer solely to the test claim statutes and regulations and related statutes and regulations and consult with their attorneys to determine how to navigate the DMP funding process to maximize the amount of state-grant money they receive, if that is their preference. Therefore, staff finds that the Deferred Maintenance Program Handbook of 2003 is not an executive order within the meaning of Government Code section 17516 and is not subject to article XIII B, section 6 of the California Constitution.

B. The Remaining Requirements of the Test Claim Statutes and Regulations Are Downstream Requirements of the District's Discretionary Decision to Participate in the Deferred Maintenance Program and, Thus, Do Not Constitute a State-Mandated Program.

As discussed below, staff finds that the test claim statutes and regulations do not impose a state-mandated program on school districts because all the requirements are imposed as a condition of establishing a district deferred maintenance fund and seeking matching funds from the state DMP. Therefore, the requirements of the test claim statutes and regulations are downstream requirements of the district's discretionary decision to participate in the DMP.

The DMP is administered by the SAB for the purpose of funding the deferred maintenance of building systems that are necessary components of a school facility. Deferred maintenance is defined as "[t]he repair or replacement work performed on school facility components that is not performed on an annual or on-going basis but planned for the future" and falls within one of the categories specified on the application form.[40] Education Code section 17582 states that "[a] district *may* establish an account to be known as the district deferred maintenance account." Once an application is approved, school districts are provided "state matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of

[38] *Ibid*.

[39] *Ibid*.

[40] California Code of Regulations, title 2, section 1866.

existing school building components."[41] Education Code section 17582(b) states that "[f]unds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a)." The maintenance purposes referenced in this code section include:

> [F]or the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, and any other items of maintenance approved by the State Allocation Board.[42]

The plain language of the test claim statutes demonstrates that the requirements are based on the district governing board's voluntary decision to establish a district deferred maintenance fund and apply to the state for matching funds. For example, the plain language of the test claim statutes states the following:

- The governing board of each school district *may establish a restricted fund* known as the "district deferred maintenance fund…;[43]
- …whenever state funds…are insufficient to fully match the local funds deposited in the deferred maintenance fund, *the governing board of each school district may transfer excess local funds deposited in that funds to any other expenditure classifications in the other funds of the district*;[44]
- …*in order to be eligible to receive state aid* pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than ½ percent of the district's current-year revenue limit daily average attendance. . .;[45]
- *School districts may submit applications* to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 17584…;[46]
- *Each district desiring an apportionment* pursuant to Section [17584] shall file with the State Allocation Board and receive approval of a five-year plan…,[47]

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[41] Deferred Maintenance Program Handbook, Office of Public School Construction. January 2003.

[42] Education Code section 17582(a).

[43] Education Code section 17582.

[44] Education Code section 17583.

[45] Education Code section 17584(c).

[46] Education Code section 17585.

- "*School districts and county offices of education may apply to the State Allocation Board. . . for funds* for the purposes of containment of asbestos materials posing a hazard to health";[48]

The italicized portions above indicate that school districts are not legally compelled by the state to comply with the requirements imposed by the plain language of the test claim statutes and regulations. Rather, the requirements result from the district's discretionary decisions to establish a district deferred maintenance fund and apply for state grant funding under the DMP.

Claimant argues, however, that the DMP is not discretionary and cites to Education Code section 17584.1 in support of that assertion. Education Code section 17584.1, as it appeared from January 1, 2000 to February 19, 2009, provided in relevant part, the following:

> (a) The governing board of a school district shall discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing.
>
> (b) In any year that the school district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, the governing board of a school district shall submit a report to the legislature by March 1, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board.
>
> (c) The report required pursuant to subdivision (b) shall contain all of the following. . .
>
> (d) Copies of the report shall be made available at each schoolsite within the school district and shall be provided to the public upon request.
>
> (e) The purpose of this section is to inform the public regarding the local decisionmaking process relating to the deferred maintenance of school facilities, and to provide a foundation for local accountability in that regard.[49]

The plain language of this section requires school districts to:

- Discuss proposals and plans for expenditure of funds for the deferred maintenance of school district facilities at a regularly scheduled public hearing;
- In any year that the district does not set aside ½ of one percent of its current-year revenue limit average daily attendance for deferred maintenance, submit a report containing the information specified in section 17584.1(c) to the Legislature, with copies to the Superintendent of Public Instruction, the State Board of Education, the Department of Finance, and the State Allocation Board; and
- Make copies of the report available at each schoolsite in the district and provide them to the public upon request.

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[47] Education Code section 17591.

[48] Education Code section 49410.2.

[49] Education Code section 17584.1 as added by Statutes 1999, chapter 390.

However, there is some ambiguity as to which school districts section 17584.1 applies to: all districts or only those participating in the DMP? According to the California Supreme Court: "[w]hen interpreting a statute, our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent."[50] Further, our Supreme Court has noted: "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. . ."[51] However, if there is ambiguity, we look to extraneous sources. The first place to look is within the same code and chapter as the provision at issue since the courts "construe every statute with reference to the entire scheme of law of which it is part. . . ."[52] If read in the context of the other code sections and the regulations establishing the DMP program which have been pled in this test claim, these requirements are conditions of a discretionary program, and are not state-mandated.

All of the other test claim statutes that make up the DMP use permissive or conditional language such as "may," "each district desiring," and "to be eligible." Likewise, the test claim regulations provide that eligibility to receive DMP grants requires a district to establish a "district deferred maintenance fund" authorized by Education Code section 17582 and to have SAB approved "Five Year Plan."[53] The Article 3 (DMP Application Procedure) regulations include the introductory language "an eligible district seeking funding."[54] Article 4 (Basic Grant Request and Apportionment) lays out the planning requirements, permissible uses and calculation of apportionments for the basic grant. It also requires the district to deposit a matching share "to receive the basic grant" and provides that a deposit of less than the maximum amount will trigger the report to the Legislature required by Education Code section 17854.1.[55] Finally, it requires the county superintendent of schools to report on the district's deposit within 60-days of the state apportionment as a condition of release of the state funds to the district.

Similarly, Article 5 (Extreme Hardship Grant Application and Apportionment) provides the eligibility and application requirements and award criteria for Extreme Hardship Grants. It also provides for reimbursement of district expenditures, permissible uses of grants, increases in funding, fund release requirements, reporting requirements, and exceptions from district contributions. Finally, Article 6 (Miscellaneous) provides for various reporting, application, and accounting requirements for applicant districts. Thus, the regulations by their own terms apply to districts that make the discretionary decision to participate in the DMP by establishing a district deferred maintenance fund and preparing a SAB approved Five Year Plan.

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[50] Exhibit I, *Freedom Newspapers, Inc v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.

[51] *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

[52] *Clean Air Constituency v. California State Air Resources Bd*. (1974) 11 Cal.3d 801.

[53] Title 2, California Code of Regulations, section 1866.1.

[54] See Title 2, California Code of Regulations, sections 1866.2, 1866.2.

[55] See Article 4 of the SAB regulations, 2, California Code of Regulations, sections 1866.4-1866.4.7.

The comments submitted by DOF, DOE and OPSC assert that all of the requirements of the test claim statutes and regulations are downstream requirements of the discretionary decision to participate in the DMP. OPSC staffs the SAB and in that capacity drafts the regulations, policies, and procedures of the SAB. The SAB, the agency responsible for implementing the DMP, has adopted regulations to implement the test claim statutes. Specifically, to implement Education Code section 17584.1, SAB has adopted Title 2, California Code of Regulations, section 1866.4.7. Section 1866.4.7, "Failure to Deposit Matching Funds" provides:

> A total deposit less than the maximum amount will require the district to comply with the reporting requirements of EC Section 17584.1. The OPSC will present to the Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited.

The language in the second sentence of this regulation presupposes a district's participation in the DMP since the "apportionments" to be "adjusted" are only made to those districts participating in the DMP that otherwise meet the DMP eligibility requirements. That means the district must have established a district deferred maintenance fund as authorized by Education Code section 17582 and submitted a five-year deferred maintenance plan that was approved by the SAB pursuant to Education Code section 17591. In other words, it must be a "participating district" that, in the year in question, made a deposit of "less than the maximum amount" into its district deferred maintenance fund. This regulation is consistent with the interpretation of the law put forth in the comments of the state agencies on the test claim.

Moreover, though there is no regulation addressing the section 17584.1(a) requirement to discuss the district's deferred maintenance plan in a regularly scheduled public hearing, it is clear that OPSC has always interpreted that requirement to apply only to participating districts. The Deferred Maintenance Program Handbook of 2003 states that section 17584.1 "sets criteria that the district's Five Year Plan be discussed in a public hearing at a regularly scheduled school board meeting. . ."[56] The provision in the preface of the Handbook defining "district" supports this conclusion. It provides: "the term 'district' applies to those entities eligible to apply for deferred maintenance funds under Regulation Section 1866.1, unless otherwise noted."[57] In other words, when discussing "district," "participating district" is what is intended since only districts that opt to establish a district deferred maintenance fund and prepare a Five Year Plan are eligible under regulations section 1866.1. The interpretation of a statute by the agency charged with its administration is accorded great respect by the courts.[58] Therefore, staff finds that section 17584.1(a) only applies to districts that make the discretionary decision to participate in the DMP and does not make the program legally required for all school districts as alleged by the claimant.

Based on the court's analysis in *Kern*, whether a district establishes a district deferred maintenance fund and applies for funding through the State's DMP is completely at the discretion of the school district and, therefore, the requirements imposed by the test claim statutes

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[56] Deferred Maintenance Program Handbook, 2003, Appendix 5.

[57] *Id*., Preface, p. iii.

[58] *Bodinson Mfg. Co. v. California Employment Commission* (1941) 17 Cal.2d 321, 325.

and regulations do not qualify as a state-mandated program within the meaning of article XIII B, section 6.[59]

In *Kern*, the Supreme Court analyzed the issue of legal compulsion by examining the nature of the claimants' participation in the underlying programs themselves. The court ruled that even if participation in the programs in question was legally compelled, the claimants were not eligible for reimbursement because they were "free at all relevant times to use funds provided by the state for that program to pay required program expenses. . ."[60]

The Court also addressed the issue of whether a district that incurs costs as a result of participating in an optional government funding program is eligible for reimbursement. The court held that there was no "practical" compulsion to participate in these programs because a district that chooses to not participate in the program or ceases participation in a program does not face "certain and severe…penalties" such as "double… taxation" or other "draconian" consequences.[61] The court rested its analysis on the premise that local entities possessing discretion will make the choices that are ultimately the most beneficial for the parties involved:

> As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the [new] requirements or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)[62]

The holding in *Kern* applies here. School districts have complete discretion in determining whether to establish a district deferred maintenance fund and apply to receive matching state funding from the state's grant program.

There is nothing in the law requiring a school district to participate in the DMP program and comply with the program requirements. If the costs of taking the actions necessary to be eligible for these funds are too high, then the school district can forgo participation in this program in exercise of its discretionary authority. Furthermore, school districts are not subjected to any penalties for not participating in this program. Nothing in the law imposes a consequence or penalty for choosing to not participate in the DMP.

In *City of Merced v. State of California*, (1984) 153 Cal.App.3d 777, the court determined whether reimbursement was required for new statutory costs imposed on the local agency to pay a property owner for loss of goodwill when a local agency exercised the power of eminent domain. The court stated:

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

[60] *Id.* at page 731.

[61] *Id.* at page 754.

[62] *Id.* at page 753.

> [W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.[63]

The court's holding in *City of Merced* demonstrates the underlying notion that in order to constitute a state-mandated activity, the school district or agency must have no other option but to perform the activities specified in the test claim statute or executive order. In *Kern,* the Supreme Court reaffirmed the *City of Merced* by stating the following:

> The truer analogy between [*Merced*] and the present case is this: In *City of Merced*, the city was under no legal compulsion to resort to eminent domain – but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[64]

There has been no shifting of costs from the state to the school districts by the test claim statutes. The test claim statutes provide state grant money to assist school districts that would otherwise be required to fund deferred maintenance using only local funding sources. Prior to 1976, school facilities, including modernization and repair and maintenance projects, were funded entirely by local tax revenues with the assistance of state loans and land grants and private donations.[65] The Legislature enacted of the Leroy Greene State School Building Lease-Purchase Law in 1976 which provided school facility loans to school districts.[66] The Legislature also provided school districts with authority to raise local funds though the Mello-Roos Community Facilities District Act and the imposition of developer fees.

The Leroy F. Greene School Facilities Act of 1998, Education Code sections 17070.10 – 17079.30, was chaptered into law on August 27, 1998, establishing the state school facility program (SFP) and amending the Leroy Greene State School Building Lease-Purchase Law to create one SFP.[67] A modernization grant under the SFP is another way for districts to obtain state funding for major maintenance projects. The SFP provides funding grants for school

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[63] *City of Merced, supra,* 153 Cal.App.3d 777, 783.

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

[65] See generally: *School Facility Financing – A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (Cohen, Joel, February 1999), and *Financing School Facilities in California* (Brunner, Eric J., October 2006).

[66] Education Code sections 17700- 17766, Statutes 1976, chapter 1010.

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

districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The modernization grant provides funding on a 60/40 basis. Districts that are able to meet the financial hardship provisions may be eligible for additional state funding of up to 100 percent of the local share of cost. There are a number of requirements that a district must meet in order to receive state funding under the SFP. One of the requirements that all but the smallest districts must meet, is that the district must establish a restricted account in the district's general fund to fund major maintenance projects and agree to deposit a sum into the fund annually, equal to between two and three percent of the district's general fund expenditures, for at least 20 years after receipt of SFP funds.[68] This maintenance fund is completely separate from the "district deferred maintenance fund" authorized by the test claim statutes, although district deposits into the restricted maintenance fund that exceed the minimum required amount may be count towards the district matching fund requirement to receive apportionments under the DMP.[69]

Moreover, school districts have other sources of local funding for school maintenance available. School districts may utilize their Proposition 98 apportionment. Additionally, Education Code section 15300 *et seq*. provides authority for the formation of a school facilities improvement district, consisting of a portion of the territory of a school district, and for the issuance of general obligation bonds by the district. The school facilities improvement district may issue bonds for specified purposes, which include making improvements to existing school facilities.[70] Government Code section 53311 authorizes the imposition of Mello-Roos fees which may be used for a variety of community facilities projects, including school maintenance.[71]

Staff finds that the requirements of the test claim statutes and regulations are conditions of participation in the DMP and receipt of state grant funds. School districts are not mandated by the state to participate in this program. The courts' holding in the *Kern* and *Merced* cases preclude the finding of a mandate where districts are free to participate in the program at will. Therefore, Education Code Sections and regulations sections pled do not impose state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

Staff finds that Education Code sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7; Title 2, California Code of Regulations Sections 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2; and the Deferred Maintenance Program Handbook of 2003 do not impose a reimbursable state-mandated program for the following reasons:

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[68] Education Code section 17070.75.

[69] Education Code section 17070.75(b)(2).

[70] Education Code section 15302.

[71] However, contrary to OPSC's assertions in its comments on the test claim, though school districts may impose developer fees for the construction or reconstruction of school facilities, they are specifically prohibited from using developer fees to fund deferred maintenance. (Ed. Code, § 17620(a)(3)(C).)

1. The Deferred Maintenance Program Handbook of 2003 does not impose any requirements and is not a plan, but rather conveys an overview of what is required by statutes and regulations. Therefore, it is not an executive order within the meaning of article XIII B, section 6 of the California Constitution.
2. The requirements of the test claim statutes and regulations are only required as a condition of establishing a district deferred maintenance fund and seeking and receiving matching funds from the State DMP. Under the analysis in *Kern*, the requirements are downstream requirements of a district's discretionary decision to participate in the program and do not impose a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and deny this test claim.

BODINSON MANUFACTURING COMPANY (a Corporation), Petitioner,
v.
CALIFORNIA EMPLOYMENT COMMISSION et al., Respondents; FRANK H. CAILTEAUX et al., Co-respondents.

Sac. No. 5407.

Supreme Court of California
February 7, 1941.

HEADNOTES

(1) Constitutional Law § 60--Constitutionality of Statutes--Scope of Inquiry--Wisdom, Policy and Expediency.

The Supreme Court is without authority to question the wisdom of the scheme set up in the Unemployment Insurance Act (Stats. 1935, chap. 352, as amended; Deering's Gen. Laws, 1939 Supp., Act 8780d), or deliberate upon the social desirability of excluding from its benefits persons leaving work because of trade disputes.

(2) Unemployment Relief--Insurance--Procedure--Judicial Remedies--Review-- Authority of Courts.

Notwithstanding the failure of the Unemployment Insurance Act (Stats. 1935, chap. 352, as amended; Deering's Gen. Laws, 1939 Supp., Act 8780d) to provide procedure for determining whether awards of benefits thereunder are consistent with the authority delegated, it is within the power of the courts to review them.

(3) Administrative Law--Judicial Review--Decisions Interpreting Statutes.

While the interpretation of a statute by an administrative agency will be accorded great respect by the courts and will be followed if not clearly erroneous, it will be overthrown by the courts, if erroneous, when such a question of law is properly presented.

(4) Statutes § 112 (1)--Construction and Interpretation--Introductory-- General Considerations--Power and Duty of Courts.

The ultimate interpretation of a statute is an exercise of judicial power.

(5) Constitutional Law § 82--Distribution of Powers of Government--Between the Several Departments--Conferring Judicial Powers on Boards or Officers.

In the absence of a constitutional provision, judicial power cannot be exercised by any body other than the courts.

(6) Constitutional Law § 48--Constitutionality of Statutes--Construction in Favor of Constitutionality--In General--Duty to Uphold.

A construction of a statute that would render it unconstitutional is to be avoided if possible.

(7) Unemployment Relief--Insurance--Persons Entitled to Benefits--Persons Leaving Work Because of Trade Dispute.

Under the Unemployment Insurance Act (Stats. 1935, chap. 352, as amended; Deering's Gen. Laws, 1939 Supp., Act 8780d) rendering ineligible for benefits a workman who has "left his work because of a trade dispute", a worker is not entitled to benefits where he voluntarily refused to pass a picket line, no force having been applied to bar him from the employer's premises.

See 11 **Cal. Jur. Ten-year Supp.,** Pocket Part, Unemployment Reserves and Social Security, § 4.

(8) Mandamus § 3--Introductory--Purpose and Office--Method of Review.

In California the remedy by *mandamus* has been extended so as to authorize the review of acts and decisions of administrative agencies in violation of law, where no other adequate remedy is provided.

(9) Unemployment Relief--Insurance--Procedure--Judicial Remedies--Review-- Mandamus--Availability of Remedy.

The writ of *mandamus* may be used to annul an award of benefits under the Unemployment Insurance Act (Stats. 1935, chap. 352, as amended; Deering's Gen. Laws, 1939, Act 8780d) in excess of the authority conferred upon the Employment Commission, no other adequate remedy having been provided.

(10) Unemployment Relief--Insurance--Procedure--Judicial Remedies--Review-- Mandamus--Petitioner--Employer.

An employer who has under section 67 of the Unemployment Insurance Act (Stats. 1935, chap. 352, as amended; Deering's Gen. Laws, 1939 Supp., Act 8780d) become an interested party to the proceedings is beneficially interested within the meaning of the Code of Civil Procedure, section 1086, so as to authorize the institution of *mandamus* proceedings to annul an award of benefits as in excess of authority.

SUMMARY

PROCEEDING in Mandamus to compel annulment of decision awarding unemployment compensation under Unemployment Insurance Act. Writ granted.

COUNSEL

J. M. Mannon, Jr., Edwin S. Pillsbury, George O. Bahrs and McCutchen, Olney, Mannon & Greene for Petitioners.

Horton & Horton, Joseph K. Horton, as *Amici Curiae,* on behalf of Petitioners. ***323**

Earl Warren, Attorney-General, John J. Dailey, Deputy Attorney-General, Maurice P. McCaffrey and Glenn V. Walls for Respondents.

Robert W. Kenny and Morris E. Cohn for Co-respondents.

Milton Marks, as *Amicus Curiae,* on behalf of Respondents.

Brobeck, Phleger & Harrison, as *Amici Curiae,* on behalf of Petitioners.

GIBSON, C. J.

Petitioner sought a writ of *mandamus* in the District Court of Appeal, Third District, to compel the respondent Commission to set aside its decision awarding unemployment compensation to two of the co-respondents, to compel it to deny such compensation to the other co-respondents, and to compel it to correct petitioner's merit rating under the Unemployment Insurance Act. (Stats. 1935, chap. 352, as amended; Deering's Gen. Laws, 1939 Supp., Act 8780d.) The writ issued as prayed. Thereafter a petition by respondents and co-respondents for hearing in this court was granted.

There is no conflict as to the material facts. The California Employment Commission is charged by law with the administration of the Unemployment Insurance Act. The petitioner, Bodinson Manufacturing Company, is an employer subject to the terms of the act, and both the company and its employees have contributed as required by law to the fund from which benefit payments are made from time to time to unemployed workers pursuant to the provisions of the statute. The five named co-respondents are machinists who, for some time prior to May 24, 1939, had been employed by petitioner at its plant in San Francisco.

On the morning of May 24, 1939, a strike was called by certain of the petitioner's employees who were members of the Welders Union, Local 1330. The co-respondent machinists were not members of the Welders Union, Local 1330, and did not go on strike against petitioner, but from May 24, 1939, to July 10, 1939, co-respondents were unemployed solely because they refused to pass through the picket line which the striking welders had established around petitioner's plant. Co-respondents applied for unemployment benefit payments ***324** and an initial determination was made under section 67 of the act, denying their application. Two of the employees, Cailteaux and Harvey, appealed as permitted by section 67, and the decision was reversed as to them by the referee. The petitioner, Bodinson Manufacturing Company, thereupon appealed to the full commission (see sec. 72), which rendered its decision holding that the two employees were entitled to unemployment compensation under the act, and further indicated that it would award benefits to all others similarly situated. Having exhausted its remedies under the act (see *Abelleira v. District Court of Appeal*, *ante*, p. 280 [109 Pac. (2d) 942], this day decided), petitioner sought this writ of mandate on the theory that the commission's order was in violation of the provisions of the Unemployment Insurance Act.

Petitioner contends that the statute, properly interpreted, makes co-respondents ineligible to receive benefit payments. The applicable provision is section 56, reading as follows: “An individual is not eligible for benefits for unemployment, and no such benefit shall be payable to him under any of the following

conditions: (a) If he left his work because of a trade dispute and for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed." The respondent commission and the co-respondent machinists contend that this clause was intended to disqualify only those workers who voluntarily leave their work because of a trade dispute, and that co-respondents did not leave their work voluntarily. They further assert that the petitioner is not a proper party to raise the question by this proceeding in *mandamus*.

The main issue is one of statutory interpretation. It is necessary to determine the meaning of the legislative declaration that a workman is disqualified if he left his work because of a trade dispute. The fundamental rights of organized labor are not involved in this controversy. No one has challenged the right of labor to strike or to maintain picket lines for the purposes sanctioned by law. (Cf. *McKay v. Retail Automobile Salesmen's Local Union No. 1067*, 16 Cal. (2d) 311 [106 Pac. (2d) 373]; *E. H. Renzel Co. v. Warehousemen's Union I. L. A. 38-44*, 16 Cal. (2d) 369 [106 Pac. (2d) 1]; *C. S. Smith Metropolitan Market Co., Ltd., v. Lyons*, 16 Cal. (2d) 389 [106 Pac. (2d) 414]; ***325***Shafer v. Registered Pharmacists Union Local 1172*, 16 Cal. (2d) 379 [106 Pac. (2d) 403]; *Lund v. Auto Mechanics Union No. 1414*, 16 Cal. (2d) 374 [106 Pac. (2d) 408].)

(1) It is not the province of this court to consider the arguments of social policy which have been urged upon it by each side; these are matters which must be, and no doubt were, addressed to the legislature. We have no authority to question the wisdom or unwisdom of the scheme set up by the statute, and we cannot deliberate upon the social desirability of making benefit payments to groups which are excluded by the statute. The conditions under which benefits are to be paid have been provided by the legislature. Thus, the sole question is whether the five employees in the present case meet the conditions which the statute prescribes.

(2) The statute does not provide its own procedure for testing whether a particular decision of the commission awarding benefits is consistent with the authority delegated to the commission under the act. The only express provision for court review is made by section 45.10, which permits an employer to contest the legality of the contribution sought to be enforced against him by paying it under protest and then suing to recover the amount so paid. It does not follow from this, however, that the courts are without power to review a decision awarding unemployment benefits when it is alleged that the commission has violated the plain provisions of the statute under which it functions.

The question presented is one of *law*. We are not concerned here with the degree of finality which the legislature may have intended to confer upon the commission's determinations of *fact*. The failure of the legislative body to provide a specific means of judicial review might well be held to indicate an intention that the commission's decisions were to be final in so far as the legislature could make them final. Respondents would have us deduce from this, however, that the legislature intended decisions awarding benefits to be final, not only as to findings of fact, but also on matters of statutory interpretation and other questions of law. (3) We recognize, of course, that an administrative agency charged with carrying out a particular statute must adopt some preliminary construction of the statute as a basis upon which to proceed. It is likewise true that the administrative interpretation of a statute will be accorded great respect by the courts and will be followed if not clearly erroneous. (***326***People v. Southern Pacific Co.*, 209 Cal. 578, 594, 595 [290 Pac. 25]; *Riley v. Thompson*, 193 Cal. 773, 778 [227 Pac. 772]; *Colonial Mut. C. Ins. Co., Ltd., v. Mitchell*, 140 Cal. App. 651, 657 [36 Pac. (2d) 127]; 23 Cal. Jur. 776. See, also, *United States v. Philbrick*, 120 U. S. 52, 59 [7 Sup. Ct. 413, 30 L. Ed. 559]; *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488 [51 Sup. Ct. 510, 75 L. Ed. 1183]; 40 Harv. L. Rev. 469.) But such a tentative administrative interpretation makes no pretense at finality and it is the duty of this court, when such a question of law is properly presented, to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction. (*Riley v. Forbes*, 193 Cal. 740, 745 [227 Pac. 768]; *Hodge v. McCall*, 185 Cal. 330, 334 [197 Pac. 86]; 23 Cal. Jur. 776; see *Federal Trade Com. v. Gratz*, 253 U. S. 421, 427 [40 Sup. Ct. 572, 64 L. Ed. 993]; *United States v. Dickson*, 40 U. S. [15 Pet.] 141, 161, 162 [10 L. Ed. 689]; *Houghton v. Payne*, 194 U. S. 88, 99, 100 [24 Sup. Ct. 590, 48 L. Ed. 888]; *Koshland v. Helvering*, 298 U. S. 441 [56 Sup. Ct. 767, 80 L. Ed. 1268, 105 A. L. R. 756]; *Iselin v. United States*, 270 U. S. 245 [46 Sup. Ct. 248, 70 L. Ed. 566]; 59 C. J. 1028; 29 Mich.

L. Rev. 840, 844; Landis, Administrative Process [1938], pp. 150-152; Blachly & Oatman, Administrative Legislation & Adjudication [1934], p. 184.) (4) The ultimate interpretation of a statute is an exercise of the judicial power. (Code Civ. Proc., sec. 2102; *Sierra Co. v. Nevada Co.*, 155 Cal. 1, 14 [99 Pac. 371]; *Signal Hill v. County of Los Angeles*, 196 Cal. 161 [236 Pac. 304]; 23 Cal. Jur. 719. Also, *Federal Trade Com. v. Gratz, supra; Dismuke v. United States*, 297 U. S. 167, 172, 173 [56 Sup. Ct. 400, 80 L. Ed. 561]; 59 C. J. 944, sec. 564.) (5) The judicial power is conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body. (Cal. Const., art. VI, sec. 1; *Western Metal Supply Co. v. Pillsbury*, 172 Cal. 407, 413 [156 Pac. 491, Ann. Cas. 1917E, 390]; *Standard Oil Co. v. State Board of Equalization*, 6 Cal. (2d) 557 [59 Pac. (2d) 119]; cf. *Agricultural Prorate Com. v. Superior Court*, 5 Cal. (2d) 550, 571 [55 Pac. (2d) 495]; *Globe Cotton Oil Mills v. Zellerbach*, 200 Cal. 276, 277 [252 Pac. 1038]; 5 Cal. Jur. 683.) (6) Thus, if it were held that the statute was intended to vest final authority in the California Employment Commission to pass upon questions of law, the act would clearly be unconstitutional. ***327** Any such construction is to be avoided if possible. (*People v. Southern Pacific Co., supra*, at p. 594; *County of Los Angeles v. Legg*, 5 Cal. (2d) 349, 353 [55 Pac. (2d) 206]; *County of Los Angeles v. Riley*, 6 Cal. (2d) 625, 629 [59 Pac. (2d) 139]; 6 Cal. Jur. 615.) Furthermore, the finality of decision which is contended for by co-respondents in this case where the particular decision happens to be favorable to them might, in a future case, operate to prevent a workman whose just claim was denied by the commission from applying to the courts for redress. Thus, despite procedural omissions in statutes creating administrative agencies, this court must, under well settled principles, continue to exercise its constitutional authority to render final decisions on questions of law which are properly raised in connection with the acts of such agencies.

(7) We are therefore required, for the first time, to construe the disqualification clause of the Unemployment Insurance Act which makes a workman ineligible for benefits if he has "left his work because of a trade dispute". It is a question upon which no authority exists in this state. Respondents contend that the language of the California statute, which says "left his work", implies that the laborer is disqualified for unemployment benefits only if he leaves his work *voluntarily.* (See Fierst & Spector, "Unemployment Compensation in Labor Disputes" (1940), 49 Yale L. J. 461, 462.) Reasoning from this premise, respondents contend that the co- respondent machinists in this case did not leave their work voluntarily, but were prevented from going there by reason of the picket line of the striking welders. It is argued that if they did not leave voluntarily, the disqualification clause does not apply, and that benefits should be paid to them.

The weakness of this argument is not in the underlying premise upon which respondents rely, but in its application to the present case based upon the assumption that the employees who refused to pass the picket line did not act of their own volition. It is true that under the proper construction of the statute an employee who is prevented from working through no act of his own is entitled to compensation as, for example, where he is barred by force from the premises where he has been working. But that is not the situation here. If the picket line was maintained within the limits permitted by law, as this one presumably was, no physical compulsion was exerted to prevent co-respondents from working. They were ***328** unemployed solely because, in accordance with their union principles, they did not choose to work in a plant where certain of their fellow employees were on strike. Their own consciences and faith in their union principles dictated their action. This choice is one which members of organized labor are frequently called upon to make, and in the eyes of the law this kind of choice has never been deemed involuntary. This very point was considered by us in a recent case dealing with the right of labor unions to picket, wherein the employer sought an injunction on the ground that the picket line operated as an unlawful *compulsion* upon other union men. We said "... it is obviously untrue that when truck drivers employed by other firms refuse to go through the picket line, they do so involuntarily. Such refusal is undoubtedly based upon the freely adopted rules of the local union to which they belong." (*C. S. Smith Metropolitan Market Co., Ltd., v. Lyons*, 16 Cal. (2d) 389, 395 [106 Pac. (2d) 414].)

In brief, disqualification under the act depends upon the fact of voluntary action, and not the motives which led to it. The legislature did not seek to interfere with union principles or practices. The act merely sets up certain conditions as a prerequisite to the right to receive compensation, and declares that in certain situations the worker shall be ineligible to receive

compensation. Fairly interpreted, it was intended to disqualify those workers who voluntarily leave their work because of a trade dispute. Co-respondents in this proceeding in fact "left their work because of a trade dispute" and are consequently ineligible to receive benefit payments. It follows that the commission's decision was erroneous as a matter of law and should be annulled. Respondents have raised two further issues of a procedural nature.

It is contended that the right to receive benefits cannot properly be raised by this proceeding in *mandamus*, and, in any event, that the employer is not a proper person to challenge a decision awarding benefits under the act. In our opinion neither contention is sound.

(8, 9) The writ of *mandamus* is provided for in the Code of Civil Procedure, sections 1084-1097. It may be sought by a "party beneficially interested" (sec. 1086) against "an inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins." (Sec. 1085.) Historically the writ has been used for far narrower purposes than those for which it is used in this state ***329** today. *Mandamus* has traditionally been merely a proceeding to compel the performance of ministerial duties and has not been widely used as a method for reviewing the decisions of administrative agencies. (*United States ex rel. McLennan v. Wilbur*, 283 U. S. 414 [51 Sup. Ct. 502, 75 L. Ed. 1148]; *United States ex rel. Riverside Oil Co. v. Hitchcock*, 190 U. S. 316 [23 Sup. Ct. 698, 47 L. Ed. 1074]; Cousens, "Legal Doubt or Determination as a Ground for Refusing Mandamus" [1936], 24 Georgetown L. Jour. 269, 272; 78 U. of Pa. L. Rev. [1930], 407.) In jurisdictions where other means exist for reviewing the acts and decisions of administrative bodies, either by specific statutory procedure or by writ of *certiorari*, there has been no necessity for enlarging the writ of *mandamus* beyond its conventional sphere. In this state, however, the law is now established that *mandamus* is the remedial writ which will be used to correct those acts and decisions of administrative agencies which are in violation of law, where no other adequate remedy is provided. (*Drummey v. State Board*, 13 Cal. (2d) 75, 82 [87 Pac. (2d) 848]; *McDonough v. Goodcell*, 13 Cal. (2d) 741 [91 Pac. (2d) 1035, 123 A. L. R. 1205]; *Whitten v. California State Board*, 8 Cal. (2d) 444, 447 [65 Pac. (2d) 1296, 115 A. L. R. 1]; cf. 16 Cal. Jur. 765, 823; 27 Cal. L. Rev. [1939], 738.) Our late decisions have recognized that the use of *mandamus* to review acts of administrative agencies is a departure from the traditional purpose of the writ, and that many historical theories concerning *mandamus* (as, for example, the technicalities of the rule that discretion in the inferior officer will bar the issuance of the writ) will not always be applicable where the writ is used to review the acts of administrative bodies. (*Drummey v. State Board of Funeral Directors*, *supra*, p. 84; *McDonough v. Goodcell*, *supra*, p. 752.) Thus, the writ has been used not only to compel administrative action which was refused in violation of law (*Wahl v. Waters*, 11 Cal. (2d) 81 [77 Pac. (2d) 1072]; *Anglo Calif. National Bank v. Leland*, 9 Cal. (2d) 347 [70 Pac. (2d) 937]; *Peters v. Sacramento City Employees Retirement System*, 27 Cal. App. (2d) 10 [80 Pac. (2d) 179]; *Hartsock v. Merritt*, 94 Cal. App. 431 [271 Pac. 381]), but also to annul or restrain administrative action already taken which is in violation of law. (*Drummey v. State Board*, *supra*; *Clancy v. Stockburger*, 10 Cal. (2d) 651 [76 Pac. (2d) 678]; *Rodgers v. Board of Pub. Works*, 208 Cal. 291 [***330**281 Pac. 64]; *Inglin v. Hoppin*, 156 Cal. 483 [105 Pac. 582]; *Lotts v. Board of Park Commrs.*, 13 Cal. App. (2d) 625 [57 Pac. (2d) 215].) The writ of *mandamus* may therefore be used in this state, not only to compel the performance of a ministerial act, but also in a proper case for the purpose of reviewing the final acts and decisions of statewide administrative agencies which do not exercise judicial power. That being so, *mandamus* was the proper proceeding to bring in the present instance.

(10) It is finally contended that the employer is not a proper party to challenge the decision of the commission awarding benefits under the act. In providing for *mandamus* proceedings the Code of Civil Procedure, section 1086, requires only that the petitioner be a party "beneficially interested." The act provides in section 67 that "any employer whose reserve account may be affected by the payment of benefits to any individual formerly in his employ *may become an interested party* to any proceeding under this Article. ..." It is conceded that the petitioner took the required steps to become an interested party under the statute in the present case and, indeed, was the moving party in appealing to the full commission from the decision awarding benefits to the co- respondents. We are aware of no authority which holds that a person permitted by statute to participate as an interested party in the administrative hearings and to take appeals at the administrative level is, nevertheless, without a sufficient interest in the result to test the

legality of the final decision before a court of law. Indeed, it seems to us that elemental principles of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same. (Cf. *L. Singer & Sons v. Union Pac. R. Co.*, ___ U. S. ___ [61 Sup. Ct. [Adv.] 254, ___ L. Ed. ___], Frankfurter, J., concurring at p. 259.) Furthermore, it seems apparent that the employer whose reserve account is affected is the only person having sufficient incentive to challenge a decision awarding benefits. Action by this employer provides the only procedural guarantee that the commission can be held by legal process to comply with the requirements of the statute under which it operates.

Respondents suggest that the rules governing a taxpayer's suit to restrain a governmental agency from spending public ***331** money should by analogy control the result here. Cases are cited to the effect that a member of the public, whose only interest in the particular administrative act is that of a general taxpayer, should not in the absence of statute be permitted to interfere with the processes of government by bringing a court proceeding against the agency. (See *Frothingham v. Mellon*, 262 U. S. 447 [43 Sup. Ct. 597, 67 L. Ed. 1078].) The situations are not analogous. A more accurate parallel is furnished by the various administrative agencies created in this state and elsewhere with limited powers for the purpose of dealing with particular phases of the relationship between employers and employees. Hearings before such agencies are treated as adversary proceedings in which interested parties on each side of the question are permitted to appear. This is the procedure adopted in workmen's compensation acts and labor relation statutes, and we do not think the legislature intended to depart from it in creating the California Employment Commission. The adversary parties to these proceedings are entitled to such appeals as are permitted under the statute, and further, are entitled to appear in court to test the commission's final decision, thus insuring compliance with the requirements of the law. Our conclusion is, therefore, that the petitioner was a proper party to test the legality of the commission's decision awarding unemployment benefits by this proceeding in *mandamus.*

It would of course be highly improper for this court to substitute its opinion for that of an administrative agency on matters which were properly entrusted to the agency to decide. In the present case, however, accepting the facts exactly as found by the commission, it is clear that there was no statutory authority for the award of benefits to co-respondents, and the peremptory writ of mandate should issue to annul the award.

The demurrers are overruled and the motions to quash the alternative writ are denied. The commission is directed to disallow benefits to the co- respondents, Haydock, Almeida and Martinez and to credit to petitioner's account all benefits heretofore paid to the other co-respondents and to disregard the claims of co-respondents in determining the petitioner's merit rating under the Unemployment Insurance Act.

Edmonds, J., Traynor, J., and Peters, J., *pro tem.*, concurred. ***332**

SHENK, J., and WARD, J., *pro tem.*,
Concurring.

We concur in the judgment on the ground that on the undisputed facts and the interpretation placed upon the statute the petitioner is entitled to the relief sought and granted.

A petition for a rehearing was denied March 7, 1941. Carter, J., voted for a rehearing.

Cal.
Bodinson Mfg. Co. v. California Employment Commission
17 Cal.2d 321, 109 P.2d 935

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CLEAN AIR CONSTITUENCY et al., Petitioners,
v.
CALIFORNIA STATE AIR RESOURCES BOARD, Respondent

S.F. No. 23093.

Supreme Court of California
June 27, 1974.

SUMMARY

In mandamus proceedings, the Supreme Court issued a writ directing the Air Resources Board to vacate its actions purporting to defer enforcement of requirements for installation of nitrogen oxide pollution devices on motor vehicles. Also, the writ directed the board to implement and enforce the device installation program in the manner set forth in the nitrogen oxide pollution control legislation set forth in Health & Saf. Code, §§ 39107.6, 39177.1-39177.4; Veh. Code, § 4602.

The court acknowledged that the legislation confers a limited discretionary authority on the board to delay the device installation program, but noted that Veh. Code, § 4602, in authorizing the board to defer certain parts of the pollution control program requires "extraordinary and compelling" reasons, and that this provision indicated a legislative intent to limit exercise of the board's discretion to reasons which relate to the effective implementation of the device installation program and the purposes of the act in seeking speedy installation of the devices, substantial reduction in nitrogen oxide pollution, and the effective enforcement of emission control requirements. The Vehicle Code provision was held to be subject to Gov. Code, § 11374, requiring administrative regulations to be consistent with the statute being administered. And on the basis that the matter of conserving energy during the "energy crisis" did not relate to the legislation's goals, it was held that the board had exceeded its discretionary powers in delaying the program for installation of the nitrogen oxide pollution control devices.

In Bank. (Opinion by Mosk, J., with Wright, C. J., McComb, Tobriner and Burke, JJ., concurring.) ***802**

HEADNOTES

Classified to California Digest of Official Reports

(1) Courts § 144--Supreme Court--Original Jurisdiction--Where Question Is of Great Public Importance.

The question whether the Air Resources Board has authority to delay the nitrogen oxide pollution control program (Health & Saf. Code, §§ 39107.6, 39177.1-39177.4; Veh. Code, § 4602) because of an existing energy crisis is a question of great public importance within the rule that the Supreme Court will exercise its original jurisdiction in mandamus pursuant to Cal. Const., art. VI, § 10, in appropriate cases, where the issues presented are of great public importance and must be resolved promptly, and the further rule that if these criteria are satisfied, the existence of an alternative appellate remedy will not preclude the court's original jurisdiction.

(2) Administrative Law § 139--Judicial Power and Control--Administrative Mandamus--Quasi-Legislative Powers.

The courts may rely on mandamus under Code Civ. Proc., § 1085, to review the validity of quasi-legislative action. If an administrative agency has exceeded its authority in the exercise of its quasi-legislative powers, a court may issue a writ of mandate against the agency.

(3) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--Legislation.

As a general proposition, the nitrogen oxide pollution control legislation confers a limited discretionary authority on the Air Resources Board to delay the motor vehicle pollution control device installation program for extraordinary and compelling reasons by postponing the requirement for certificates of compliance on renewal of registration and by making corresponding adjustments in the geographical and license plate schedules by which the program is implemented.

(4) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--Discretion of Air Resources Board.

The Air Resources Board may make discretionary adjustments of the geographical schedule established under Health & Saf. Code, § 39177.1, subd. (a), a part of the nitrogen oxide pollution control legislation, to correspond to a delay in the statewide requirement for certificates of compliance on renewal of registration of motor vehicles.

(5) Automobiles and Highway Traffic § 20--Licenses and

Registration-- Pollution Control--Statutory Conflict.

Health & Saf. Code, §§ 39176.1, 39177.1, subd. (a), both parts of the nitrogen oxide pollution control legislation, conflict with each other in that the former section permits the Air Resources Board to designate counties in which resident vehicle owners shall be exempt from the pollution control device installation requirement, whereas the latter section requires every 1966 through 1970 model vehicle under 6,001 pounds to be equipped with a device meeting the standards established under Health & Saf. Code, § 39107.6.

(6) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--Discretion of Air Resources Board.

In authorizing the Air Resources Board to delay the nitrogen oxide pollution control program for "extraordinary and compelling reasons," pursuant to Veh. Code, § 4602, subd. (b), the Legislature intended to limit exercise of the board's discretion to reasons which relate to the effective implementation of the pollution control device installation program and to the clearly expressed purposes of the Air Resources Act (Stats. 1967, ch. 1545, p. 3680, as amended), and to reserve to itself the power to determine fundamental policy matters, particularly as to an issue as basic and formidable as the competing values of clean air and energy, in relation to an existing "energy crisis."
[See **Cal.Jur.3d,** Automobiles, § 85; **Am.Jur.2d,** Automobiles and Highway Traffic, § 158.]

(7) Statutes § 114--Construction and Interpretation--Giving Effect to Intent of Legislature.

The courts must give statutes a reasonable construction which conforms to the apparent purpose and intention of the lawmakers, should ascertain the Legislature's intent so as to effectuate the statute's purpose, and should construe every statute with reference to the entire scheme of law of which it is a part, so that the whole may be harmonized and retain effectiveness.

(8) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--Purposes of Legislation.

Three primary goals of the nitrogen oxide pollution control legislation are speedy installation of pollution control devices in motor vehicles, substantial reduction of nitrogen oxide pollution, and the effective enforcement of emission control requirements. Concern for gasoline consumption bears no relationship to these goals.

(9) Administrative Law § 57--Administrative Rules and Regulations--Relation to Statutory Authority.

An administrative agency cannot promulgate regulations which conflict with the purpose of the governing legislation.

(10) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--"Energy Crisis" as Reason for Delaying Program.

The Air Resources Board's decision to delay, on the basis of the "energy crisis," enforcement of the program for installation of pollution control devices on motor vehicles exceeded its authority under Gov. Code, § 11374, requiring administrative regulations to be consistent with the statute being administered.

(11) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--Effect of Statute Requiring Administrative Regulations to Be Consistent With Statute.

The provision in Veh. Code, § 4602, authorizing the Air Resources Board to defer certain parts of the nitrogen oxide pollution control program for "extraordinary and compelling reasons" is confined by Gov. Code, § 11374, relating to administrative regulations, to the purpose and goals of the Air Resources Act (Stats. 1967, ch. 1545, p. 3680, as amended).

(12) Administrative Law § 30--Constitutionality of Delegation of Power-- Sufficiency of Legislative Standard.

An unconstitutional delegation of power occurs where the Legislature confers on an administrative agency the unrestricted authority to make fundamental policy determinations. To avoid such delegation, the Legislature must provide an adequate yardstick for the guidance of the administrative body empowered to execute the law. Although the breadth of the standard set by the Legislature may vary with the subject matter of the legislation, it must not enable the administrative agency to exercise greater discretion than is necessary for fulfillment of the Legislature's purposes.

(13) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--Justification for Delay in Enforcing Pollution Controls.

Each time the Air Resources Board elects to defer the nitrogen oxide pollution control program, it must justify the action in terms which relate to speedy installation of pollution control devices, substantial pollution reduction, or effective enforcement of emission control requirements.

(14) Automobiles and Highway Traffic § 20--Licenses and Registration-- Pollution Control--"Energy Crisis" as Reason For Delaying Program.

Veh. Code, § 4602, authorizing the Air Resources Board to defer enforcement of certain requirements of the nitrogen oxide pollution control program, did not authorize the board's action in deferring enforcement of such requirements for the stated reason of conserving gasoline during an existing "energy crisis."

COUNSEL

Mary D. Nichols, Paul, Hastings, Janofsky & Walker, Dennis H. Vaughn, Donald A. Daucher, Munger, Tolles, Hills & Rickershauser and Dennis C. Brown for Petitioners.

Evelle J. Younger, Attorney General, Carl Boronkay, Assistant Attorney General, Jeffrey C. Freedman and Alan Robert Block, Deputy Attorneys General, for Respondent.

MOSK, J.

This is a proceeding for an original writ of mandate brought against the California State Air Resources Board (hereinafter ARB) by an association of individuals and groups concerned with implementing clean air legislation, together with two manufacturers of pollution control devices and a private citizen residing in Los Angeles County.

The issue is whether the ARB has authority to delay its oxides of nitrogen pollution control program for the stated reason of conserving gasoline during the energy crisis. Initially, we are called upon to determine whether this court may assume original jurisdiction in mandamus under article VI, section 10, of the California Constitution. If jurisdiction exists, we must consider whether the Legislature has conferred discretionary authority upon the ARB to delay the program for the control of atmospheric emissions of oxides of nitrogen (hereinafter NOx) and, if such discretion exists, whether the ARB may exercise this discretion to help alleviate the energy crisis. We examine those sections of the Health and Safety Code and related statutes which authorize the ARB to administer a statewide program to equip 1966 through 1970 model year vehicles (hereinafter the subject ***806** vehicles) with devices to control vehicular emissions of NOx (Health & Saf. Code, §§ 39107.6, 39177.1-39177.4; Veh. Code, § 4602, hereinafter NOx legislation).

For the reasons discussed *infra* we hold that this court is entitled to exercise original jurisdiction in mandamus under article VI, section 10, of the California Constitution; that the ARB has limited discretionary authority to delay the NOx program; but that it has no authority to delay this program for reasons related to the energy crisis. Accordingly, petitioners are entitled to a peremptory writ vacating the ARB's action to delay the installation programs and ordering the ARB to implement and enforce the NOx installation program in the manner directed by statute.

In 1971, the Legislature amended the Mulford-Carrell Air Resources Act (Stats. 1967, ch. 1545, p. 3680) to require the ARB to set standards for devices which would significantly reduce the emission of NOx from the exhaust of certain 1966 through 1970 model year vehicles and to establish a program for the installation of pollution control devices. (Health & Saf. Code, § 39107.6.) Generally, this amendment (Stats. 1971, ch. 1507, p. 2978) provides for the installation of NOx control devices in every subject vehicle and empowers the ARB to establish by regulation a schedule of installation. (Health & Saf. Code, § 39177.1.) The legislation states that certificates of compliance shall be required upon initial registration and transfer of ownership of subject vehicles (Health & Saf. Code, § 39177.1, subd. (b) (2)), and shall be required for all subject vehicles upon renewal of registration in 1973 (Health & Saf. Code, § 39177.1, subd. (b)(3)). In addition, the NOx legislation authorizes the ARB to delay the latter requirement "for extraordinary and compelling reasons only"; in such event, the ARB may adjust its schedule of installation but must immediately report to the Governor and the Legislature. (Veh. Code, § 4602, subd. (b).)

After an initial delay caused by a shortage of mechanics and pollution control devices, the ARB established its first schedules for the installation program. One schedule, corresponding to the certificate provision of section 39177.1, subdivision (b) (2), required the mandatory installation of NOx devices upon the transfer of ownership and initial registration of subject vehicles. The dates on which this requirement would take effect depended upon geographical area and ranged from February 1 to June 1, 1973.

In addition to the geographical schedule, the ARB adopted a schedule ***807** for the installation of devices based on the last arabic number on the license plates of subject vehicles. By this schedule, the ARB required all owners of subject vehicles to install pollution control devices between the dates of June 1973 and April 1974. This schedule facilitated the section 39177.1, subdivision (b) (3), requirement for certificates upon renewal of registration. Although the code section required certificates of compliance upon renewal of registration for the year 1973, the ARB delayed the certificate requirement under the

"extraordinary and compelling reasons only" clause of Vehicle Code section 4602 until renewal of registration for the year 1975. Apparently, this date was intended to correspond to the declared California goal of pure air with no significant adverse effect from motor vehicle air pollution by 1975. (Health & Saf. Code, § 39081, subd. (d), added by the Pure Air Act of 1968, Stats. 1968, ch. 764, § 8, p. 1467.)

In June 1973 the ARB again deferred the installation program. The board had received data which indicated that some devices might cause engine damage. Consequently, the ARB suspended the announced installation schedules pending a reconsideration of its decision to accredit some NOx devices. (See Cal. Admin. Code, tit. 13, § 2002, subd. (a).) Shortly thereafter, however, the ARB adopted new schedules which would have required the installation of NOx devices by the end of 1974.

On December 19, 1973, the ARB voted for a third time to delay the installation program. (Resolution No. 73-27G.) The ARB justified this action on a theory that the energy crisis presented an extraordinary and compelling reason for further delay. Accordingly, it resolved to postpone the installation program based on the license plate schedule by one year and to defer the installation of devices upon initial registration and transfer of ownership (the geographical schedule) from January 1, 1974, to April 1, 1974. [FN1] In accordance with the one-year delay of the license plate schedule, the ARB deferred the requirement of certificates of compliance upon renewal of registration from 1975 to 1976. The effect of the new geographical schedule was to postpone the installation requirement upon initial registration and upon transfer of ownership in rural areas by three months. [FN2]

FN1 Since this three-month period has now expired, the question of the validity of the ARB's action in this limited respect is moot.

FN2 The portion of the geographical schedule which pertained to the three major air basins remained unchanged.

According to the ARB's staff report, this delay will result in the emission ***808** of an additional 100 tons of NOx per day from 1966-1970 model year vehicles in 1974 and 30 tons per day in 1975. In contrast to these statistics, the resolution will prevent an increase in gasoline consumption of approximately .5 percent in 1974 and .13 percent in 1975.

The Writ of Mandate

(1) The Supreme Court has original jurisdiction in mandamus pursuant to article VI, section 10, of the California Constitution, and will exercise that jurisdiction in appropriate cases when "the issues presented are of great public importance and must be resolved promptly." (*County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845 [59 Cal.Rptr. 609, 428 P.2d 593]; *Mooney* v. *Pickett* (1971) 4 Cal.3d 669, 675 [94 Cal.Rptr. 279, 483 P.2d 1231].) If these criteria are satisfied, the existence of an alternative appellate remedy will not preclude this court's original jurisdiction. (Cal. Civil Writs (Cont.Ed.Bar 1970) § 5.39, p. 91; see *Acton v. Henderson* (1957) 150 Cal.App.2d 1, 7 [309 P.2d 481].)

The present case presents a question of great public importance which must be resolved promptly: whether the ARB has authority to delay the NOx program because of the energy crisis. If this program is delayed pursuant to the ARB's resolution and emergency regulations, the result will be the production of an additional 100 tons of NOx per day to pollute the air of California.

The Legislature has underscored the public significance of the pollution control device program. In the urgency section of the NOx act, the Legislature declared that the 1966 through 1970 vehicles do not eliminate enough of the oxides of nitrogen to insure the health and safety of the majority of California's citizens. Because oxides of nitrogen are "dangerous substances," the Legislature declared its desire that "such devices [be] installed on most of such passenger vehicles within the shortest time possible." (Stats. 1971, ch. 1507, § 8, p. 2981.)

Finally, the new delay may cause the emergence of an inadequate supply of interested manufacturers and devices when and if the program resumes. According to the declarations of several accredited device manufacturers who are plaintiffs in this action, they will lose substantially all their investments in the NOx device program if the program is delayed. Suppliers of component parts for these devices and distributors of the finished product ***809** are alleged to be experiencing similar difficulties. Consequently, their continued participation in the program is seriously endangered. [FN3]

FN3 Respondent raised an objection to the standing of the two out-of-state corporate petitioners. We need not reach the issue since there is no question of the standing of the other petition-

ers.

(2) The writ of mandate is appropriate to review the actions of the ARB. The courts may rely upon mandamus under Code of Civil Procedure section 1085 to review the validity of a quasi-legislative action. (Cal. Civil Writs (Cont.Ed.Bar 1970) § 5.37, p. 89.) If an administrative agency has exceeded its authority in the exercise of its quasi-legislative powers, a court may issue a writ of mandate. (See *Griffin* v. *Board of Supervisors* (1963) 60 Cal.2d 318 [33 Cal.Rptr. 101, 384 P.2d 421]; *Manjares* v. *Newton* (1966) 64 Cal.2d 365 [49 Cal.Rptr. 805, 411 P.2d 901].)

Discretionary Authority to Delay the NOx Program

On three occasions, the ARB has assumed discretionary authority to delay the NOx pollution control device program which was enacted by the Legislature as an urgency statute. (Stats. 1971, ch. 1507, § 8, p. 2981.) (3) Without passing on the validity of the ARB's exercise of discretion in each instance, we believe, as a general proposition, that the NOx legislation confers a limited discretionary authority upon the ARB to delay the NOx installation program by postponing the requirement for certificates of compliance upon renewal of registration and by making corresponding adjustments in the geographical and license plate schedules by which this program is implemented.

The ARB may postpone the requirement that owners of subject vehicles file certificates of compliance upon renewal of registration and may defer the statewide license plate schedule by which this requirement is satisfied when "extraordinary and compelling reasons" justify this action. (Veh. Code, § 4602, subd. (b).) Under Health and Safety Code section 39177.1, subdivision (a), the ARB has authority to adopt installation schedules by which subject vehicles are required to be equipped with NOx devices. These schedules must facilitate the execution of the requirement embodied in Health and Safety Code section 39177.1, subdivision (b)(3), which provides that "certificates of compliance shall be required upon renewal of registration for the year 1973, pursuant to Section 4602 of the Vehicle Code." Under Vehicle Code section 4602, subdivision (b), however, the ARB may defer the requirement for certificates of compliance upon renewal of registration for 1973 "for extraordinary and compelling reasons only." In such event, the board may adjust installation schedules adopted pursuant to Health and Safety Code section 39177.1, subdivision (a). Therefore, ***810** we conclude that the ARB has authority to delay both the requirement for certificates of compliance upon renewal of registration and to adjust the license plate schedule adopted pursuant to section 39177.1, subdivision (a), if, in fact, extraordinary and compelling reasons for taking such action exist.

We also conclude that the ARB possesses an area of discretionary authority to adjust the geographical schedule by which subject vehicles are to be equipped with NOx devices upon initial registration and upon transfer of ownership. This conclusion emerges whether the source of authority to adopt the geographical schedule is Health and Safety Code section 39177.1, subdivision (a), as plaintiffs contend, or is Health and Safety Code section 39176.1, as defendant contends.

As stated previously, Health and Safety Code section 39177.1, subdivision (a), declares that the ARB shall require owners of 1966-1970 model year vehicles to install NOx devices in accordance with a schedule to be determined by regulation adopted by the board. Section 39177.1, subdivision (b), provides for the enforcement of subdivision (a) by requiring among other things that certificates of compliance shall be necessary upon change of ownership (i.e., upon initial registration and upon transfer of ownership and registration) (Health & Saf. Code, § 39177.1, subd. (b)(2)) and by requiring certificates upon renewal of registration for the year 1973 (Health & Saf. Code, § 39177.1, subd. (b) (3)). It may be argued that the provision to establish an installation schedule in subdivision (a) confers authority upon the ARB to adopt a geographical schedule in addition to the license plate schedule as a means of implementing primarily the requirement for certificates upon change of ownership in subdivision (b)(2) and secondarily the statewide requirement for certificates upon renewal of registration in subdivision (b) (3). As noted, these requirements are the means chosen by the Legislature to enforce the installation requirement of subdivision (a). Therefore, we conclude that the promulgation of the geographical schedule was authorized under section 39177.1, subdivision (a).

If section 39177.1, subdivision (a), is the source of the geographical schedule, then related code sections authorize the ARB to make adjustments in this schedule to provide for reasonable delays in the NOx installation program. As stated previously, the requirement for certificates upon renewal of registration may be postponed for extraordinary and compelling reasons. (Veh. Code, § 4602, subd. (b).) Moreover, if the ARB defers this requirement for appropriate reasons, it may make corresponding adjustments in the schedules it has adopted under Health and Safety Code

section 39177.1, subdivision (a). (Veh. Code, § 4602, subd. (b).) ***811**

(4) Since the ARB had authority to establish the geographical schedule under section 39177.1, subdivision (a), we hold that the ARB may make discretionary adjustments in this schedule to correspond to a delay in the statewide requirement for certificates of compliance upon renewal of registration. While the geographical schedule primarily serves to implement the requirement to install NOx devices upon change of ownership, this schedule and requirement are merely a phase-in step to statewide installation through the license plate schedule and the requirement for certificates upon renewal of registration. Therefore, it would be appropriate for the ARB to adjust both the license plate schedule and the geographical schedule when it has extraordinary and compelling reasons to delay the requirement for certificates upon renewal of registration. [FN4] When the Legislature enacted the NOx legislation, it chose to require the installation of accredited NOx devices for 1966 through 1970 model vehicles and to provide for the establishment of installation schedules in a separate statute, section 39177.1. If sections 39176 and 39176.1 were intended to apply to the NOx program, the Legislature might have been expected to incorporate these grants of authority into the NOx legislation instead of granting similar authority in a separate code section. ***812**

> FN4 The ARB argues that it has discretion to adjust the geographical schedule under Health and Safety Code section 39176.1. Under this provision, the board is authorized to establish a schedule of installation to be not less than one year whenever it requires the installation of motor vehicle pollution control devices pursuant to section 39176. Section 39176.1 empowers the ARB to designate geographical areas in which resident owners of vehicles shall be exempt from the installation requirement. In addition, section 39176.1 entitles the board to consider "all relevant factors" in establishing installation schedules.
>
> It is not clear whether section 39176.1 applies to the NOx legislation, although both are found in article 5 of the Air Resources Act, as amended. (Health & Saf. Code, §§ 39107.6, 39177.1-39177.4, and Veh. Code, § 4602.) One of the enforcement provisions of Health and Safety Code section 39177.1, the central code section in the NOx legislation, provides that "certificates of compliance shall be required upon initial registration, and upon transfer of ownership and registration pursuant to Section 4000.1 of the Vehicle Code." Section 4000.1 states that the Department of Motor Vehicles shall require, pursuant to regulation of the ARB "adopted pursuant to Section 39176.1 of the Health and Safety Code," a certificate of compliance upon initial registration and upon transfer of ownership. Hence it may be contended that the geographical schedule which implements the change of ownership requirement was adopted by the ARB pursuant to section 39176.1.
>
> Nevertheless, several arguments support the conclusion that section 39176.1 does not apply to the NOx legislation and, therefore, does not provide authority for the exercise of discretion in this case. The geographical schedule for the change of ownership installation program covers a time span which is less than one year. Consequently, it does not comply with the requirement of section 39176.1 to adopt installation schedules "to be not less than one year."
>
> The NOx legislation seems to duplicate authority granted in sections 39176 and 39176.1 which were enacted prior to the NOx legislation. Section 39176 requires the installation of devices upon ARB accreditation, while section 39176.1 authorizes the ARB to set up installation schedules to implement the section 39176 requirement.

(5) Sections 39176.1 and 39177.1 (NOx legislation) conflict with one another. While the former section permits the ARB to designate counties in which resident owners of vehicles shall be exempt from the installation requirement, the emergency NOx legislation requires every 1966 through 1970 model vehicle of under 6,001 pounds to be equipped with an NOx device meeting the standards established under Health and Safety Code section 39107.6. (Health & Saf. Code, § 39177.1, subd. (a).)

Other preexisting sections of article 5 of the Air Resources Act, as amended (Health & Saf. Code, §§ 39175-39184), do not appear to apply automatically to the 1971 NOx legislation. For example, section 39177, which is part of the 1968 act and interrelates with sections 39176 and 39176.1, gives the ARB limited discretion to exempt certain types of vehicles from compliance with installation requirements. Section 39177.2 of the new NOx legislation

provides in part that any vehicle which is exempted by the ARB pursuant to section 39177 of the Pure Air Act may also be exempt from the installation requirements of section 39177.1, the NOx legislation. If the provisions of the preexisting law applied automatically to the NOx legislation, then the express statement in section 39177.2 incorporating section 39177 is superfluous.

It appears that the two installation programs, the NOx legislation and the preexisting sections of the Used Motor Vehicle Device Accreditation program (art. 5 of the Air Resources Act, as amended) coexist with one another but do not always interrelate without explicit incorporation. We itemize the following breakdown of the statutes:

	Pre-NOx Legislation - Code sections of article 5	NOx Legislation
Power to set standards for devices	§ 39175, subds. (c) and (e)	§ 39107.6
Requirement of installation	§ 39176	§ 39177.1,subd. (a)
Installation schedules	§ 39176.1	§ 39177.1, subd. (b)
Standards for devices	§ 39180	§ 39177.3
Exemption from installment requirements	§ 39176.1	§ 39177.2
Discretion to delay the program	§ 39176.1	Veh. Code, § 4602, subd. (b)
Conditions for accreditation of device	§ 39182	§ 39177.4

While some of the article 5 statutes are general and appear to apply across the board (e.g., § 39175, which states the general powers of the board) other article 5 statutes and NOx sections are mutually exclusive in parts and redundant in others (e.g., §§ 39180 and 39177.3; §§ 39182 and 39177.4). In view of these inconsistencies and the immediate conflict between sections 39176.1 and 39177.1, subdivision (a), we cannot assume that the Legislature intended section 39176.1 to apply to the NOx legislation.

Vehicle Code Section 4602: The "Extraordinary and Compelling Reasons Only" Clause

Having concluded that the ARB has an area of discretion to delay the NOx program under Vehicle Code section 4602, subdivision (b), we must next determine whether the energy crisis constitutes an extraordinary and compelling reason, within the meaning of that section, to postpone the program. (6) Plaintiffs contend that when the Legislature authorized the ARB to delay the NOx device program "for extraordinary and compelling reasons only" under Vehicle Code section 4602, it intended to limit the exercise of the ARB's discretion to reasons which relate to the effective implementation of the installation program and to the clearly expressed purposes of the Air Resources Act. We agree with this contention.

First, a delay to accommodate the energy crisis conflicts with the express purposes of the Air Resources Act and the NOx legislation. Second, administrative agencies exceed the scope of their authority when they promulgate regulations which contravene the purposes and the effective implementation of the governing legislation. Finally, the extraordinary and compelling reasons clause would constitute an invalid delegation of powers if its scope were not limited to reasons relating to the purposes of the act. In view of these considerations, we conclude that the Legislature intended to limit the ARB's discretion under section 4602 and to reserve for itself the power to determine fundamental policy matters, particularly an issue as basic and formidable as the competing values of clean air and energy.

Purposes of the NOx Legislation. In determining the breadth of discretion conferred upon the ARB by section 4602, we analyze it in accordance with accepted principles of statutory construction. (7) The courts must give statutes a reasonable construction which conforms to the apparent purpose and intention of the lawmakers. (*Anaheim Union Water Co. v. Franchise Tax Bd.* (1972) 26 Cal.App.3d 95 [102 Cal.Rptr. 692].) It is ***814** fundamental in statutory construction that courts should ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Cal. Toll Bridge Authority v. Kuchel* (1952) 40 Cal.2d 43, 53 [251 P.2d 4]; *Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 802 [151 P.2d 505, 157 A.L.R. 324].) Moreover, they should construe every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness. Under these principles of construction, we must determine the breadth of discretion conferred upon the ARB under section 4602, subdivision (b), in accordance with the

purposes of the NOx legislation and with reference to the whole law of which it is part, the Air Resources Act as amended.

Speedy installation of NOx devices on California motor vehicles is the apparent goal of the NOx legislation. Health and Safety Code section 39177.1, subdivision (b)(3), clearly manifests the Legislature's intention to require statewide installation on all 1966-1970 model year vehicles under 6,001 pounds by 1973. Moreover, in adopting the NOx legislation, the Legislature declared that "this act is an urgency statute necessary for the immediate preservation of the public peace, health or safety ... and shall go into immediate effect" and that the installation of devices on most passenger vehicles should take place "within the shortest time possible." (Stats. 1971, ch. 1507, § 8, p. 2981.)

Preexisting sections of the Air Resources Act reinforce this sense of urgency and necessity for pollution control. In Health and Safety Code section 39010, the Legislature expressed its finding that the people of California have a primary interest in the quality of their physical environment and that atmospheric pollution has created a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California. Again, in Health and Safety Code section 39081, subdivision (b), the Legislature declared its finding that the control and elimination of vehicular pollutants is of prime importance for the protection and preservation of the public health and well-being. Subdivision (d) of the same section expresses the Legislature's intent to achieve an atmosphere with no significant, detectable adverse effect from motor vehicle air pollution on health, welfare, and the quality of life and property by 1975.

Aside from the purpose to obtain speedy installation of NOx control devices, the Legislature was manifestly concerned with both the effectiveness of the devices and with the effective implementation of the installation program. Health and Safety Code section 39107.6 provides that the ARB should establish standards for exhaust emission devices which are ***815** necessary and technologically feasible to carry out the purposes of the Air Resources Act and that the primary consideration should be "the greatest possible reduction of oxides of nitrogen." Once standards are set and the devices have been accredited, the NOx legislation provides for vehicle inspections, certificates of compliance, and any other authorized means of enforcement that the ARB, the Department of Motor Vehicles, and the Highway Patrol find practicable. (Health & Saf. Code, § 39177.1, subd.(b).)

(8) From the foregoing, it appears that three primary goals of the NOx legislation are speedy installation of devices, substantial reduction of NOx pollution, and the effective enforcement of emission control requirements. Concern about gasoline consumption is not mentioned in the legislation and bears no relationship to these goals. As the ARB has recognized, the Legislature enacted the NOx program with the knowledge that pollution control devices consume gasoline. [FN5] Moreover, the ARB was created not to coordinate a program for the conservation of energy but to "provide a single state agency for the administration, research, establishment of standards, and the coordination of air conservation activities carried on within the state." (Health & Saf. Code, § 39013.) Therefore, we conclude that the ARB's action violates the NOx legislation's primary goal of speedy and effective purification of the atmosphere.

> FN5 In a staff report dated April 18, 1973, for example, the ARB states that in accrediting NOx devices, criteria imposed upon the board include such factors as safety, increase in other emissions, *adverse effects on vehicle performance*, durability, marketing capability, maintenance requirements, and financial and public interest factors. It then notes that "increased fuel consumption is not included in the category of adverse effects. The original law assumed [the NOx device] would be used with its accompanying fuel penalty."

Scope of ARB's Authority. (9) An administrative agency cannot promulgate regulations which conflict with the purpose of the governing legislation. Under Health and Safety Code section 39175, the ARB must adopt rules and regulations in accordance with the provisions of the Administrative Procedure Act of the Government Code. Government Code section 11374 provides: "Whenever by express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." (See also *Desert Environment Conservation Assn. v. Public Utilities Com.* (1973) 8 Cal.3d 739, 742-743 [***816**106 Cal.Rptr. 31, 505 P.2d 223]; *Rosas v. Montgomery* (1970) 10 Cal.App.3d 77, 92 [88 Cal.Rptr. 907, 43 A.L.R.3d 537]; *Imperial Termite Control, Inc. v. Structural Pest Control Bd.* (1969) 275 Cal.App.2d 685, 689 [80 Cal.Rptr.

156].)

In view of section 11374, we cannot interpret the extraordinary and compelling reasons clause to empower the ARB to postpone the NOx program. The Legislature conferred upon the ARB authority to implement a program for the speedy and effective eradication of NOx pollution. In accordance with this goal, the ARB had authority to accredit NOx control devices, to establish schedules for the installation of such devices, and to coordinate enforcement activities with the Department of Motor Vehicles and the Highway Patrol. Section 11374 requires the ARB to perform these tasks through regulations which do not conflict with the statute and which are reasonably necessary to effectuate the purpose of the legislation. By the same token, section 11374 prohibits the ARB from exercising its discretion under the compelling and extraordinary reasons clause when the delay is not necessary to facilitate the purposes of the NOx legislation. (10) Since the ARB's most recent postponement of the urgent NOx program does not effectuate and is not consistent with the goals of speedy installation of accredited devices, substantial reduction of NOx emissions, and effective enforcement of emission control requirements, the ARB's decision to delay the program exceeded the scope of its authority under section 11374. [FN6]

> FN6 Of some analogy in this connection are the several "impoundment" cases recently decided in federal courts. In varying statutory contexts the courts held the executive branch of government cannot whimsically, or even for what it deems sufficient cause, refuse to execute provisions of a congressional act. See, e.g., *Community Action Prog. Exec. Dir.* *Ass'n. of N.J., Inc.* v. *Ash* (D.N.J. 1973) 365 F.Supp. 1355; *Commonwealth of Pennsylvania v. Lynn* (D.D.C. 1973) 362 F. Supp. 1363; *National Coun. of Com. Mental H. Ctrs., Inc. v. Weinberger* (D.D.C. 1973) 361 F.Supp. 897; *Local 2677, American Fed. of Gov. Emp. v. Phillips* (D.D.C. 1973) 358 F.Supp. 60; *Berends* v. *Butz* (D.Minn. 1973) 357 F. Supp. 143, 156.

Delegation of Powers. (11) If Government Code section 11374 or legislative intent does not confine the scope of Vehicle Code section 4602 to extraordinary and compelling reasons relating to the purposes and goals of the Air Resources Act, then section 4602 would constitute an unconstitutional delegation of powers. (See *Imperial Termite Control, Inc. v. Structural Pest Control Bd.* (1969) *supra*, 275 Cal.App.2d 685, 689.) (12) An unconstitutional delegation of power occurs when the Legislature confers upon an administrative agency the unrestricted authority to make fundamental policy determinations. (***817***Kugler v. Yocum* (1968) 69 Cal.2d 371 [71 Cal.Rptr. 687, 445 P.2d 303]; *Knudsen Creamery Co. v. Brock* (1951) 37 Cal.2d 485, 493 [234 P.2d 26]; *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal.2d 349, 369 [55 Cal.Rptr. 23, 420 P.2d 735].) To avoid such delegation, the Legislature must provide an adequate yardstick for the guidance of the administrative body empowered to execute the law. (*Am. Distilling Co. v. St. Bd. of Equalization* (1942) 55 Cal.App.2d 799, 805 [131 P.2d 609]; *Harris* v. *Alcoholic Bev. etc. Appeals Bd.* (1964) 228 Cal.App.2d 1, 6 [39 Cal.Rptr. 192]; *In re Porterfield* (1946) 28 Cal.2d 91, 111 [168 P.2d 706, 167 A.L.R. 675].) Underlying these rules is the belief that the Legislature as the most representative organ of government should settle insofar as possible controverted issues of policy and that it must determine crucial issues whenever it has the time, information and competence to deal with them. (Jaffe, Judicial Control of Administrative Action (1965) pp. 41, 85.) The extraordinary and compelling reasons clause violates these principles unless it is limited to reasons which relate to the purposes and goals of the Air Resources Act.

As the present case illustrates, the respondent interprets Vehicle Code section 4602 in a manner which permits it to make legislative decisions. When the Legislature enacted the Air Resources Act and the NOx legislation, it concluded as a matter of fundamental policy that urgent action against automobile pollution was essential for the health of California's residents. In effect, it made clean air a higher priority than the concern for fuel consumption, the problem of rising costs in transportation, or the economics of the automobile industry. [FN7] After making this policy determination, the Legislature directed the ARB to establish a program which would accomplish the goal of pollution control. In response, the ARB determined that urgent action against the energy crisis was essential for the economic well-being of the state. In effect, its action to delay the NOx program for one year inverted the priorities by making energy consumption loftier in significance than concern for clean air. In other words, when the ARB postponed the NOx legislation, it made the same kind of fundamental - though contrary - policy determination the Legislature had made when it enacted the program in the first instance.

> FN7 The fundamental nature of the Legislature's concern for environmental protection is emphasized by Public Resources Code section 21000,

> subdivision (g), which states: "It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that the major consideration is given to preventing environmental damage." (See also *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247 [104 Cal.Rptr. 761, 502 P.2d 1049].)

Respondent fails to explain why the ARB made this decision instead ***818** of the Legislature. During the 1973 Regular Session the Legislature considered and failed to enact at least five proposals to delay the NOx program. (Sen.Bill No. 824, Apr. 23, 1973; Sen.Bill No. 825, Apr. 23, 1973; Assem.Bill No. 1964, Apr. 30, 1973; Sen. Concurrent Res. No. 52, May 16, 1973; Sen.Bill No. 1424, June 19, 1973.) As these bills suggest, the Legislature has the time, information, and competence to consider the issue of postponement; there is no valid justification for the ARB to act in the Legislature's stead. [FN8]

> FN8 In the State of Maryland a special session of the Legislature was called to provide for emergency powers in connection with the energy crisis. The Legislature thereupon authorized the Governor to proclaim a state of emergency under which he could direct the "suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to air quality control ...." (State Government Administration (May 1974) p. 13.)

The extraordinary and compelling reasons clause as interpreted by the state cannot qualify as a sufficient legislative standard for administrative guidance. Although the breadth of the standard may vary with the subject matter of the legislation, it must not enable an administrative agency to exercise greater discretion than that which is necessary for the fulfillment of the Legislature's purposes. (*Caminetti v. Pacific Mut. Life Ins. Co.* (1943) 22 Cal.2d 344, 364 [139 P.2d 908]; *In re Porterfield* (1946) *supra*, 28 Cal.2d 91, 110-111; 2 Cal.Jur.3d, Administrative Law, § 63, p. 285.) The ARB has power to delay the NOx program for any compelling reason arising out of human experience in order to set up and enforce an effective and speedy program for the eradication of harmful automobile emissions. With the primary goals of the NOx legislation as its guide, the ARB could perhaps delay the program under Vehicle Code section 4602 when, for example, devices cannot be installed because of a shortage of materials or mechanics, when significant problems arise in the administration and enforcement of the registration, certificate, and vehicle check requirements, or when the devices fail to control emissions effectively. Since the purposes of speedy installation, substantial reduction of NOx, and effective enforcement provide the ARB with enough flexibility to set up, administer, and even to reasonably delay the program in the interest of clean air and effective pollution control, the broad and virtually unlimited interpretation of Vehicle Code section 4602 for which the state contends is unnecessary and is violative of the separation of powers.

Since we conclude that Government Code section 11374 limits the extraordinary and compelling reasons clause, and that the Legislature intended the ARB to predicate the exercise of its discretion under this clause ***819** on reasons relating to the three primary goals of the NOx legislation, no problem arises under the separation of powers clause (Cal. Const., art. III, § 3.) (13) Each time the ARB elects to defer the NOx program, it must justify the action in terms which relate to speedy installation, substantial pollution reduction, or effective enforcement. This interpretation of Vehicle Code section 4602 enables the ARB to exercise enough discretion to carry out the broad purposes of the Air Resources Act, and still reserves to the Legislature as the most representative organ of government the right to make those crucial policy determinations for which it has competence, information, and time. (Davis, Administrative Law (3d ed. 1972) pp. 92-93.)

Because we interpret the scope of the extraordinary and compelling reasons clause under Vehicle Code section 4602 in light of Government Code section 11374, and because a narrow interpretation of the clause avoids constitutional problems under the separation of powers clause, the ARB must justify delays under section 4602 by reference to the three primary goals of the NOx legislation and the Air Resources Act. (14) Since the concern over the energy crisis does not relate to these goals, we conclude that the ARB had no power under section 4602 to postpone the program. [FN9]

> FN9 Respondent also contends that Health and Safety Code section 39176.1 empowers the ARB to delay the NOx program. That section provides in part: "In establishing installation schedules and areas exempted from installation, the board shall consider all relevant factors, including the burden of enforcement on the Department of the Cali-

fornia Highway Patrol and the Department of Motor Vehicles, the need for rapid installation of the devices in order to preserve and protect the public health, and the existing ambient air quality in each area." According to the state, "all relevant factors" empowers the ARB to postpone the NOx program because of the energy crisis.

Even if this code section applies to the NOx legislation (see fn. 4, *ante*) it does not authorize the ARB to delay the installation programs in this instance. We interpret the phrase "all relevant factors" to mean those circumstances which relate to the purposes and goals of the NOx legislation. The same considerations under Government Code section 11374 and the separation of powers clause that applied to the extraordinary and compelling reasons clause of Vehicle Code section 4602 apply to the "all relevant factors" clause of section 39176.1. In addition, section 39176.1 states that the factors must be "relevant," and provides specific examples all of which relate to the primary goals of speedy installation, effective reduction of pollution, and enforcement. Since, as a matter of construction, "particular expressions qualify those which are general" (Civ. Code, § 3534), we interpret "relevant factors" in light of the specific examples and conclude that this phrase must relate to the purposes of the NOx legislation. Under this interpretation, section 39176.1 would not permit the ARB to justify its postponement because of the energy crisis.

Let a peremptory writ of mandate issue directing the respondent to vacate ARB Resolution No. 73-27G and Emergency Regulation amending ***820** California Administrative Code, title 13, section 2008, subdivisions (a), (b), and (d) filed December 28, 1973, and to implement and enforce the NOx installation program in the manner set forth in the NOx legislation.

Wright, C. J., McComb, J., Tobriner, J., and Burke, J., concurred. ***821**

Cal.
Clean Air Constituency v. California State Air Resources Bd.
11 Cal.3d 801, 523 P.2d 617, 114 Cal.Rptr. 577, 6 ERC 1945

END OF DOCUMENT

SEAN PATRICK DELANEY et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; ROXANA KOPETMAN et al., Real Parties in Interest
No. S006866.

Supreme Court of California
May 3, 1990.

SUMMARY

Defendant, who was charged in a misdemeanor complaint with possession of brass knuckles in violation of Pen. Code, § 12020, subd. (a), moved to suppress evidence of the brass knuckles on the ground that he had not consented to the patdown search of his jacket that led to the seizure of the knuckles. Two reporters had been accompanying the members of a police task force who had seized the knuckles, and defendant subpoenaed them to testify at the suppression hearing. The reporters moved to quash the subpoenas, contending that their eyewitness observations constituted "unpublished information" protected by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070). The municipal court denied the motions, and the reporters refused to testify as to whether defendant had consented to the search. The municipal court concluded that the shield law did not apply to the reporters' eyewitness observations and that, even if it did apply, the need for the reporters' presumably disinterested testimony outweighed their claim of immunity. The court cited both reporters for contempt. The reporters filed petitions for writs of habeas corpus in the superior court, and that court granted their petitions, finding that the shield law provided them with immunity from contempt. (Superior Court of Los Angeles County, Nos. HC206320 and HC206321, Aurelio Munoz, Judge.) Both defendant and the People then filed a joint petition in the Court of Appeal seeking to vacate the orders of the superior court granting the habeas corpus petitions. The Court of Appeal, Second Dist., Div. One, No. B032695, found that the shield law does not give a newsperson the right to refuse to testify as to his observations of a public event and ordered the superior court to vacate its orders granting the petitions for writs of habeas corpus.

The Supreme Court affirmed the judgment of the Court of Appeal and directed the Court of Appeal to issue a peremptory writ of mandate compelling the superior court to vacate its orders granting the habeas corpus petitions and to make new and different orders denying the habeas corpus petitions. The court held that the definition of "unpublished information" in the shield law includes a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place. It held that the municipal court struck the proper balance in determining that if the shield law did apply, the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity. It also held that defendant met and surpassed the required threshold showing for disclosure, since there was not just a reasonable possibility, but rather a substantial certainty, that the testimony would assist him in his defense. Further, the reporters' observations were not made in confidence and were not sensitive, their testimony would not impinge on their future news-gathering ability, and they were the only two possible disinterested witnesses. (Opinion by Eagleson, J., with Lucas, C. J. (as to part III), Panelli, Kennard, JJ., and Kremer (Daniel J.), J., [FN*] concurring. Separate concurring opinions by Mosk, J., and by Broussard, J., with Lucas, C. J., concurring as to part I only.)

FN* Presiding Justice, Court of Appeal, Fourth Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Nature of Protection.
Cal. Const., art. I, § 2, subd. (b), and Evid. Code, § 1070, California's shield law, protects a newsperson from being adjudged in contempt for refusing to disclose either (1) unpublished information, or (2) the source of information, whether published or unpublished. The protection provided by these provisions is

not a privilege but only an immunity. (Disapproving, to the extent they suggest the contrary, *Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388 [153 Cal.Rptr. 608], and *CBS, Inc. v. Superior Court* (1978) 85 Cal.App.3d 241 [149 Cal.Rptr. 421].) The shield law prohibits only a judgment of contempt and, unlike a privilege, it does not protect against other sanctions. [Privilege of news-gatherer against disclosure of confidential sources or information, note, 99 **A.L.R.3d** 37. See also **Cal.Jur.3d,** Evidence, § 473; **Am.Jur.2d,** Witnesses, § 297.]

(2a, 2b, 2c, 2d, 2e, 2f, 2g) Witnesses § 11--Privileged Relationships and Communications--Newsperson's Shield Law--Unpublished Information as Including Reporter's Eyewitness Observations.

In the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), the definition of "unpublished information" includes a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place. The shield law states plainly that a newsperson is not to be adjudged in contempt for refusing to disclose any unpublished information. In the context of the shield law, "any" means without limit and no matter what kind. Nowhere in the definition of unpublished information is there an explicit or implied restriction to confidential information. Although a possible inference from the ballot argument in favor of Proposition 5 in 1980, the measure that adopted the constitutional provision, was that only confidential information was meant to be protected, a possible inference in an extrinsic source may not be given more weight than a clear statement in the Constitution itself. (Disapproving, to the extent that they hold or suggest that the shield law protects only confidential information, *CBS, Inc. v. Superior Court* (1978) 85 Cal.App.3d 241 [149 Cal.Rptr. 421], and *Liggett v. Superior Court* (1989) 211 Cal.App.3d 1461 [260 Cal.Rptr. 161], review granted Oct. 12, 1989 (S011581).)

(3) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Nature of Protection--Information Gathered Outside Scope of Employment as Reporter.

The newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), provides no protection for information obtained by a journalist not directly engaged in gathering, receiving, or processing news.

(4) Statutes § 21--Construction--Legislative Intent.

In construing a law, a court's primary task is to determine the lawmakers' intent. In the case of a constitutional provision enacted by the voters, their intent governs. To determine intent, the court turns first to the words themselves for the answer. If the language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters).

(5) Constitutional Law § 13--Construction of Constitutions--Ordinary Meaning.

Words used in a constitutional provision should be given the meaning they bear in ordinary use.

(6) Statutes § 38--Construction--Giving Effect to Statute--Construing Every Word.

In construing a statute, significance should be given, if possible, to every word of the act. Conversely, a construction that renders a word surplusage should be avoided.

(7) Constitutional Law § 13--Construction of Constitutions--Language of Enactment.

The Constitution is to interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.

(8) Words, Phrases, and Maxims--Information.

"Information" includes "reception of knowledge" and "knowledge obtained from reading, observation, or instruction."

(9) Constitutional Law § 24--Constitutionality of Legislation--Rules of Interpretation--Conflict Between Statute and Constitution.

Wherever statutes conflict with constitutional provisions, the constitutional provisions must prevail.

(10) Constitutional Law § 12--Construction of Constitutions--Background, Purpose, and Intent of Enactment--Legislative Materials Not Before Voters.

In construing constitutional language, legislative materials not before the voters are not relevant to determining the voters' intent.

(11) Statutes § 42--Construction--Aids--Motives or Understandings of Author.

In construing legislation, the motives or understandings of an individual legislator are not considered, even if he or she authored the statute.

(12) Constitutional Law § 12--Construction of Constitutions--Background, Purpose, and Intent of Enactment--Ballot Arguments.
Ballot arguments are accepted sources from which to ascertain the voters' intent in adopting a constitutional provision. As with the legislative history of a statute, however, a court need not look beyond the language of the enactment when the language is unambiguous.

(13) Statutes § 31--Construction--Language--Definitions.
If the lawmaker has provided an express definition, the courts must take it as they find it.

(14) Constitutional Law § 10--Construction of Constitutions--Inconveniences Involved in Application.
Courts, in construing the Constitution, are bound to suppose that any inconveniences involved in the application of its provisions, according to their plain terms and import, were considered in its formation, and voluntarily accepted as less intolerable than those which are thereby avoided, or as fully compensated by countervailing advantages.

(15) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings.
The protection of the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), is overcome in a criminal proceeding on a showing that nondisclosure would deprive the defendant of his federal constitutional right to a fair trial. The incorporation of the shield law into the California Constitution cannot restrict a criminal defendant's federal constitutional right to a fair trial. Such a result would violate the supremacy clauses of the federal and state Constitutions (U.S. Const., art. VI, cl. 2; Cal. Const., art. III, § 1).

(16) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Burden of Proof.
A person claiming a privilege bears the burden of proving he is entitled to the privilege. Pursuant to its terms, the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070) provides only an immunity from contempt, not a privilege. This distinction, however, is not relevant to assigning the burden. Regardless of the label used, the purpose of the shield law is the same-to protect a newsperson's ability to gather and report the news. The newsperson seeking immunity must prove all the requirements of the shield law have been met. The burden then shifts to the criminal defendant seeking discovery to make the showing required to overcome the shield law.

(17a, 17b, 17c) Witnesses § 11--Privileged Relationships and Communications--Newsperson's Shield Law--Application in Criminal Proceedings-- Procedure for Overcoming Immunity.
To overcome a claim of immunity under the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), a criminal defendant must make a threshold showing that there exists a reasonable possibility that the information will materially assist his defense. The court must then consider the defendant's and newsperson's respective, and perhaps conflicting, interests, taking into account: whether the unpublished information is confidential or sensitive; whether the policy of the shield law will be thwarted by disclosure (if the defendant is himself the source of the information, it cannot seriously be argued that the source will feel that his confidence has been breached); the importance of the evidence to the defendant's case; and, in the appropriate case, whether there is an alternative source for the unpublished information. The court must then balance these factors. An in camera hearing will not be required in every case. The court has discretion in the first instance to determine whether a newsperson's claim of confidentiality or sensitivity is colorable. If the court determines the claim is colorable, it must then receive the newsperson's testimony in camera. (Disapproving *Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038 [248 Cal.Rptr. 635], to the extent it did not consider the fact that the party seeking disclosure was the source of the unpublished information.)

(18) Criminal Law § 140--Discovery--Right to Compulsory Process.
A criminal defendant's constitutional right to compulsory process was intended to permit him to request governmental assistance in obtaining likely helpful evidence, not just evidence that he can show beforehand will go to the heart of his case. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal

justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.

(19a, 19b) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Procedure for Overcoming Immunity--Nature of Threshold Showing.
A criminal defendant, in order to overcome the immunity created by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), must make a threshold showing. This showing need not be detailed or specific, but it must rest on more than mere speculation. The defendant need not show a reasonable possibility that the information sought will lead to his exoneration; he need only show a reasonable possibility that the information will materially assist his defense. Evidence may be critical to a defense even if it will not lead to exoneration. For example, evidence may establish an "imperfect defense," a lesser included offense, a lesser related offense, or a lesser degree of the same crime; impeach the credibility of a prosecution witness; or, as in capital cases, establish mitigating circumstances relevant to the penalty determination. A criminal defendant's constitutional right to a fair trial includes these aspects of his defense.

(20) Words, Phrases, and Maxims--Exoneration.
"Exoneration" means "the removal of a burden, charge, responsibility, or duty." Stated more simply, in criminal proceedings, "exoneration" is generally understood to mean an acquittal or dismissal of charges.

(21) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Procedure for Overcoming Immunity--Alternative-source Requirement.
In a proceeding in which a criminal defendant attempts to overcome the immunity provided by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), a universal and inflexible requirement, that the defendant show that he has no alternative source for the information sought, is inappropriate. In considering whether the requirement is appropriate in a given case, the trial court should consider the type of information being sought (e.g., names of potential witnesses, documents, a reporter's eyewitness observations), the quality of the alternative source, and the practicality of obtaining the information from the alternative source. The trial court must also consider whether the information is confidential or sensitive, the interest sought to be protected by the shield law, and the importance of the information to the criminal defendant. (Disapproving, to the extent they suggest that a criminal defendant must in every case show the lack of an alternative source regardless of the circumstances, *Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388 [153 Cal.Rptr. 608], and *Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038 [248 Cal.Rptr. 635].)

(22) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Reporters' Eyewitness Observations of Search and Seizure.
In a prosecution for possession of brass knuckles (Pen. Code, § 12020, subd. (a)), in which defendant moved to suppress evidence of the brass knuckles on the ground that he had not consented to the patdown search of his jacket that led to the seizure of the knuckles, the municipal court did not err in determining that if the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070) applied to the eyewitness observations by two reporters of the nonconfidential, public circumstances of the search and seizure, the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity. The reporters had been accompanying members of the police task force that encountered defendant and seized the knuckles. Defendant met and surpassed the required threshold showing for disclosure, since there was not just a reasonable possibility, but rather a substantial certainty, that the reporter's testimony would assist him in his defense. Further, the reporters' observations were not made in confidence and were not sensitive, their testimony would not impinge on their future news-gathering ability, and they were the only two possible disinterested witnesses.

(23) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Reporters' Eyewitness Observations of Search

and Seizure--Sufficiency of Evidence to Support Finding.
In a prosecution for possession of brass knuckles (Pen. Code, § 12020, subd. (a)), in which defendant moved to suppress evidence of the brass knuckles on the ground that he had not consented to the patdown search of his jacket that led to the seizure of the knuckles, the municipal court's order citing two reporters for contempt, on the ground of their refusal to testify as to their observations of the search and seizure incident, was supported by substantial evidence. The reporters had been accompanying members of a police task force at the time of the encounter. They contended that they were entitled to the immunity provided by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070). However, the trial court correctly determined that if the law applied, the need for the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity under the shield law.

COUNSEL
Wilbur F. Littlefield, Public Defender, Laurence M. Sarnoff, Michael Updike and Albert J. Menaster, Deputy Public Defenders, John A. Vander Lans, City Prosecutor, Robert R. Recknagel, Assistant City Prosecutor, Steven Shaw and Gerry L. Ensley, Deputy City Prosecutors, for Petitioners.
No appearance for Respondent.
Gibson, Dunn & Crutcher, Rex S. Heinke, Kelli L. Sager, Sheila R. Caudle, William A. Niese and Glen A. Smith for Real Parties in Interest.

EAGLESON, J.
The issues in this case are: (1) whether the term "unpublished information" in the California newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070) includes a newsperson's nonconfidential, eyewitness observations of an occurrence in a public place; and, (2) if so, whether a newsperson can nevertheless be held in contempt for refusing to disclose such information in a criminal proceeding. ***793**

As we shall explain, we hold the shield law's broad definition of "unpublished information" does not require a showing by the newsperson that the information was obtained in confidence. We further hold, however, that a newsperson's protection under the shield law must yield to a criminal defendant's constitutional right to a fair trial when the newsperson's refusal to disclose information would unduly infringe on that right. In this case, the trial court correctly determined that the balance between the rights of the newspersons and the defendant weighs in favor of compelled disclosure. We affirm the judgment of the Court of Appeal.

Facts

Underlying Facts

Real parties in interest, Los Angeles Times reporter Roxana Kopetman and photographer Roberto Santiago Bertero, were accompanying members of a Long Beach Police Department task force on patrol. (For convenience we will sometimes refer collectively to Kopetman and Bertero as the reporters.) The officers observed Sean Patrick Delaney and a companion seated on a bench in the Long Beach Plaza Mall. A plastic bag of a type often used to store narcotics was protruding from Delaney's shirt pocket. The officers inquired about the contents of the bag, and Delaney removed it from his pocket to show that it contained a piece of gold and a piece of jewelry. He told the officers he intended to pawn the items at the mall. Because no pawnshops were in the mall, the officers became suspicious and asked Delaney for his identification. Delaney reached for a jacket lying next to him on the bench as if to get his wallet. According to the officers, they asked Delaney before he picked up the jacket if they could check it for weapons. *He allegedly consented to the search*. An officer ran his fingers along the outside of the jacket and felt a hard object in its pocket. He reached inside and retrieved a set of brass knuckles, which Delaney claimed was a key chain.

Four days later, the Los Angeles Times (hereafter the Times) published an article about the police task force. The article included information regarding the police contact with Delaney but did not refer to whether he had consented to the search of his jacket pocket.

Procedural History

Delaney was charged in a misdemeanor complaint with possession of brass knuckles in violation of Penal Code section 12020, subdivision (a). He moved to suppress evidence of the brass knuckles, arguing that he had not consented to the patdown search of his jacket and that the resulting seizure ***794** of the brass knuckles was therefore illegal because the officers had

lacked a reasonable suspicion that he was armed. Delaney subpoenaed the reporters to testify at the suppression hearing in municipal court. The reporters moved to quash the subpoenas, contending they could not be compelled to testify because their eyewitness observations of the public search and seizure constituted "unpublished information" protected by the newspersons' shield law from disclosure. The motions were denied.

Following testimony by the officers at the suppression hearing, the reporters were called to testify by the prosecution to demonstrate the legality of the seizure. Their testimony established that each of them observed the events leading to the seizure and that each was situated in a position to observe whether Delaney had consented to the search of his jacket. The reporters, however, refused to answer any questions relating to whether Delaney had consented. The municipal court concluded that the shield law did not apply to the reporters' eyewitness observations of the nonconfidential, public circumstances of the search and seizure. The court further found that, even if the shield law applied, the need for the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity under the shield law. The court cited both reporters for contempt.

The reporters filed petitions for writs of habeas corpus in the superior court. That court found the shield law provided the reporters with immunity from contempt and granted their petitions.

Delaney and the People of the State of California (through the Long Beach City Prosecutor) filed a joint petition in the Court of Appeal seeking to vacate the orders of the superior court that granted the reporters' habeas corpus petitions. (Delaney's misdemeanor prosecution has been suspended pending final resolution of the reporters' contempt citations.) The Court of Appeal held the shield law does not give a newsperson the right to refuse to testify as to his observations of a public event and ordered the superior court to vacate its orders granting the petitions for writs of habeas corpus. The Court of Appeal's decision was initially unanimous but, after real parties petitioned for rehearing, one justice changed her position and filed a dissenting opinion.

Discussion

I. *History of California's Shield Law*

Newspersons had no privilege or immunity under common law to refuse to disclose the identity of their confidential sources. (*Ex Parte* ***795***Lawrence and Levings* (1897) 116 Cal. 298, 300 [48 P. 124] [upholding contempt citations issued to a newspaper reporter and editor for refusing to disclose confidential sources to the state Senate]; *Mitchell* v. *Superior Court* (1984) 37 Cal.3d 268, 274, fn. 3 [208 Cal.Rptr. 152, 690 P.2d 625] [noting prohibition in Evidence Code section 911 of common law privileges]; Tent. Recommendation and Study Relating to the Uniform Rules of Evidence, art. V, Privileges (Feb. 1964) 6 Cal. Law Revision Com. Rep. (1964) p. 488 [noting that "the newsmen's privilege is entirely alien to the common law"].) [FN1]

FN1 We use the term "newsperson" for convenience to refer to all the categories of persons identified in the shield law. (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070.)

In 1935 the Legislature passed the first shield law. (Stats. 1935, ch. 532, § 1, pp. 1608-1610.) The statute, which was codified as Code of Civil Procedure section 1881, subdivision 6, provided that newspaper employees could not be adjudged in contempt for refusal to disclose their sources to courts or legislative or administrative bodies. Subsequent amendments extended the immunity to employees of radio and television stations, press associations, and wire services. (Stats. 1961, ch. 629, § 1, pp. 1797-1798.) In 1965 the Legislature transferred these statutory provisions to Evidence Code section 1070, which became effective in 1967. (Stats. 1965, ch. 299, § 2, pp. 1297, 1323-1335; Evid. Code, § 12.) [FN2]

FN2 In the remainder of this opinion we refer to Evidence Code section 1070 for convenience merely as section 1070.

In 1972, a plurality of the United States Supreme Court concluded that the First Amendment to the federal Constitution does not provide newspersons with even a qualified privilege against appearing before a grand jury and being compelled to answer questions as to either the identity of news sources or information received from those sources. (*Branzburg* v. *Hayes* (1972) 408 U.S. 665 [33 L.Ed.2d 626, 92

S.Ct. 2646].) The high court made clear, however, that state legislatures are "free, within First Amendment limits, to fashion their own standards." (*Id.*, at p. 706.) [FN3]***796**

FN3 There has been considerable debate as to whether the court as a whole in *Branzburg v. Hayes, supra*, 408 U.S. 665, recognized a qualified privilege. Four justices dissented from the plurality opinion. Three of them (Justices Brennan, Marshall, and Stewart) would have recognized a qualified privilege; the fourth (Justice Douglas) advocated an absolute privilege. Justice Powell joined the plurality in finding no privilege on the facts before the court but stated his view that the question of privilege should be determined on a case-by-case basis. Justice Stewart subsequently observed that, in light of Justice Powell's concurring opinion, the decision was "perhaps by a vote of four and a half to four and a half." (Stewart, *Or of the Press* (1975) 26 Hastings L.J. 631, 635.)Similarly, counsel for the New York Times in one of the consolidated cases decided in *Branzburg* later acknowledged that "... Justice Powell's opinion is singularly opaque ...." (Goodale, *Branzburg v. Hayes and the Developing Qualified Privilege for Newsmen* (1975) 26 Hastings L.J. 709.)Despite this lack of clear guidance, "... lower federal courts have consistently read the case to support some kind of qualified privilege for reporters." (Tribe, American Constitutional Law (2d ed. 1988) § 12-22, p. 972.) Several state courts have done likewise. In *Mitchell v. Superior Court, supra*, 37 Cal.3d 268, 277, we concurred in the observation by some other courts that Justice Powell's position was the "minimum common denominator" of *Branzburg* and that the decision therefore does not *preclude* a qualified privilege. We did not decide the question of whether *Branzburg requires* a privilege in some cases. Because *Branzburg* is not dispositive of the present case, we need not linger over the troublesome question of its scope and meaning.

In 1974 the California Legislature amended section 1070 to its present form, apparently in response to *Branzburg, supra*, 408 U.S. 665.(Stats. 1974, ch. 1323, § 1, p. 2877; Stats. 1974, ch. 1456, § 2, p. 3184.) That amendment expanded the scope of the shield law to protect against the compelled disclosure of "unpublished information" as well as sources.

In June 1980, California voters approved Proposition 5, a state constitutional amendment proposed by the Assembly. (Assem. Const. Amend. No. 4, Stats. 1978 (1977-1978 Reg. Sess.) res. ch. 77, pp. 4819-4820.) The proposition incorporated language virtually identical to section 1070 into the California Constitution, as article I, section 2, subdivision (b). [FN4]

FN4 For convenience and brevity we refer in the remainder of this opinion to the constitutional provision as article I, section 2(b). It states in its entirety: "A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

"Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

"As used in this subdivision, 'unpublished information' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not

related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated."

II. *Scope of the Shield Law*

Article I, section 2(b) provides that a newsperson "shall not be adjudged in contempt ... for refusing to disclose the *source of any information* procured while so connected or employed [as a newsperson] ... *or* for refusing to disclose *any unpublished information* obtained or prepared in gathering, receiving or processing of information for communication to the public." (Italics added.) [FN5](1) Stated more simply, article I, section 2(b)***797** protects a newsperson from being adjudged in contempt for refusing to disclose either: (1) unpublished information, or (2) the source of information, whether published or unpublished. [FN6]

FN5 Because section 1070 and article I, section 2(b) are identical except for minor and insignificant differences in wording, we will discuss only the constitutional provision. Our discussion of article I, section 2(b), however, applies with equal force to section 1070. (*Union Pacific R.R. Co. v. State Bd. of Equalization* (1989) 49 Cal.3d 138, 146, fn. 4 [260 Cal.Rptr. 565, 776 P.2d 267] [noting that our discussion of a state constitutional provision applied with equal force to its substantially identical statutory counterpart].)

FN6 As a preliminary matter, we think it necessary to note the occasional mischaracterization of the shield law by the Courts of Appeal. More specifically, the protection provided by the shield law has sometimes been referred to as a privilege. Article I, section 2(b), however, states only that newspersons "shall not be adjudged in contempt." On its face, the shield law does no more than prohibit a newsperson from being held in contempt. Moreover, the Legislature has stressed in reference to identical language in section 1070 that, "It should be noted that Section 1070, like the existing law, provides an immunity from being adjudged in contempt; *it does not create a privilege*." (Assem. Committee on Judiciary com., 29B West's Annot. Evid. Code (1966 ed.) § 1070, p. 655, italics added.) The California Law Revision Commission has also characterized section 1070 as creating only an immunity, not a privilege. (7 Cal. Law Revision Com. Rep. (Jan. 1965) p. 208.) Likewise, we have recognized that the shield law prohibits only a judgment of contempt and that, unlike a privilege, the shield law does not protect against other sanctions. (*Mitchell v. Superior Court, supra*, 37 Cal.3d 268, 274.)

The immunity-privilege distinction has been observed in most cases. For example, in *KSDO v. Superior Court* (1982) 136 Cal.App.3d 375 [186 Cal.Rptr. 211], the court stated, "The California shield law ... is unique in that it affords only limited protection. *It does not create a privilege* for newspeople, rather it provides an immunity from being adjudged in contempt. This rather basic distinction has been misstated and apparently misunderstood by members of the news media and our courts as well." (*Id.*, at pp. 379-380, italics added.) We agree with the *KSDO* court and the others who have correctly noted that the shield law provides only an immunity from contempt, not a privilege. (*Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038, 1045 [248 Cal.Rptr. 635]; *Playboy Enterprises, Inc. v. Superior Court* (1984) 154 Cal.App.3d 14, 26 [201 Cal.Rptr. 207].) We disapprove of occasional suggestions, perhaps inadvertent, to the contrary. (*Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388, 396-398 [153 Cal.Rptr. 608]; *CBS, Inc.* v. *Superior Court* (1978) 85 Cal.App.3d 241, 250 [149 Cal.Rptr. 421].)

The parties agree there is no attempt to compel the reporters to reveal the identity of a source. Delaney was the source of whatever information the reporters may have as to whether he consented to the police search of his jacket, and his identity is of course already known. [FN7]Rather, Delaney seeks only the reporters' testimony as to whether he consented to the search. The reporters do not contend they promised to keep confidential any information they obtained or

observations they made while preparing their article on the Long Beach Police Department's task force. (2a) The question therefore is whether the shield law's definition of "unpublished information" includes a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place. (3) **(See fn. 8.)** We conclude that it does. [FN8] ***798**

FN7 One might also view the police as being a source of this information, but, as with Delaney, their identities are already known.

FN8 There is no dispute in this case that the reporters were acting as newspersons and were directly engaged in the process of "gathering, receiving or processing of information for communication to the public" within the meaning of the shield law when they observed the events as to which their testimony is sought. We emphasize, however, the importance of this requirement. As the Times itself recently recognized, the shield law provides no protection for information obtained by a journalist not directly engaged in "gathering, receiving or processing" news. In an editorial criticizing the Court of Appeal decision in this case, the Times correctly observed that "A reporter who, say, wanders into a liquor store on his way home from work and witnesses a holdup could not invoke the shield law and refuse to testify. *Off the job, a journalist is no different from any other citizen*." (*Breaking the Shield*, L.A. Times (July 20, 1988) Metro Section, pt. 2, p. 6, col. 1, italics added.) We agree.

A. *Language of the shield law*

(4) We begin with the fundamental rule that our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) In the case of a constitutional provision adopted by the voters, their intent governs. (*Kaiser v. Hopkins* (1936) 6 Cal.2d 537, 538 [58 P.2d 1278]; *Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 618 [194 Cal.Rptr. 294].) To determine intent, "'The court turns first to the words themselves for the answer.'" (*Brown v. Kelly Broadcasting Co., supra*, 48 Cal.3d 711, 724, quoting *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(2b) The language of article I, section 2(b) is clear and unambiguous as to the question presented in this case. The section states plainly that a newsperson shall not be adjudged in contempt for "refusing to disclose *any* unpublished information." (Italics added.) The parties seeking discovery in this case (Delaney and the prosecutor) contend article I, section 2(b) applies only to unpublished information obtained *in confidence* by a newsperson. Such a construction might be possible if the voters had used the phrase "unpublished information" without the modifier "any." They did not do so. The use of the word "any" makes clear that article I, section 2(b) applies to all information, regardless of whether it was obtained in confidence. (5) Words used in a constitutional provision "should be given the meaning they bear in ordinary use." (*Lungren* v. *Deukmejian, supra*, 45 Cal.3d 727, 735; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281].) (2c) In the context of article I, section 2(b), the word "any" means without limit and no matter what kind. (Webster's New World Dict. (2d college ed. 1982) p. 62.) To restrict the scope of article I, section 2(b) to confidential information would be to read the word "any" out of the section. We decline to do so. (6) Significance should be given, if possible, to every word of an act.***799** (*Mercer v. Perez* (1968) 68 Cal.2d 104, 112 [65 Cal.Rptr. 315, 436 P.2d 315].) Conversely, a construction that renders a word surplusage should be avoided. (*City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54 [184 Cal.Rptr. 713, 648 P.2d 935]; *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836].) [FN9]

FN9 Faced with statutes that, like our shield law, protect against forced disclosure of "any information," a clear majority of other states' appellate courts have also found such language to be unambiguous and have held the statutes apply to nonconfidential information. (*Austin* v. *Memphis Pub. Co.* (Tenn. 1983) 655 S.W.2d 146, 149-150 [court de-

clined to insert the word "confidential" into the statute]; *Grand Forks Herald v. District Court, etc.*(N.D. 1982) 322 N.W.2d 850, 854 [court found no intent in the the wording of the statute that it be limited to confidential sources]; *Lightman v. State* (1972) 15 Md.App. 713 [294 A.2d 149, 156],affd. (Md. 1972) 295 A.2d 212 [language broad enough to emcompass all sources of information].) Although we are not bound by those cases, they do reflect that our decision is in the mainstream of statutory construction. Two state high court decisions to the contrary are plainly distinguishable. (*Knight-Ridder v. Greenberg* (1987) 70 N.Y.2d 151 [518 N.Y.S.2d 595, 598-599, 511 N.E.2d 1116] [decision based not on statute's language but on long history of contrary interpretation by the state's lower courts and the state Legislature's not having amended the statute to supersede the lower courts' view]; *Hatchard* v. *Westinghouse Broadcasting* (1987) 516 Pa. 184 [532 A.2d 346, 348-351] [stressing the need for narrow privilege in defamation actions so as not to restrict unduly the plaintiff's ability to recover].)

(2d) We need not rely solely on the voters' use of the word "any." Article I, section 2(b) further states: "As used in this subdivision, 'unpublished information' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated." Nowhere in this broad definition is there an explicit or implied restriction of article I, section 2(b) to confidential information. (7) To so limit the section, we would have to insert into it the word "confidential" and thus violate the cardinal rule that "The constitution is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions." (*People v. Campbell* (1902) 138 Cal. 11, 15 [70 P. 918]; *Ross* v. *City of Long Beach* (1944) 24 Cal.2d 258, 260 [148 P.2d 649].)

Delaney contends a reporter's percipient observations of a nonconfidential occurrence are not "information" within the meaning of shield law. This attempted distinction between observations and information is unpersuasive. Under Delaney's strained interpretation, a reporter or any other eyewitness to an automobile accident would have no "information" as ***800** to the accident. This flies in the face of reason and plain English. (8) "Information" includes "reception of knowledge" and "knowledge obtained from reading, *observation*, or instruction." (Webster's New Internat. Dict. (2d ed. 1958) p. 1276, italics added.) When a reporter or other person is called on to testify as to his observations of an event, he is being asked to disclose information. Moreover, if the distinction between observations and information were logical, the result would be that even a newsperson's *confidential* observations would not be protected. That result would be contrary to the manifest purpose and language of article I, section 2(b).

(2e) In short, the plain language of article I, section 2(b) leads to only one tenable conclusion. We hold that the shield law's definition of "unpublished information" is not restricted to information obtained in confidence by a newsperson.

B. *Legislative and constitutional history*

The reporters rely on the legislative history of section 1070 to support their view. Delaney and the prosecutor disagree with the reporters' interpretation of that history. It is, however, beside the point for two reasons. First, as we have explained, article I, section 2(b) and section 1070 are virtually identical. In light of our determination that the language of article I, section 2(b) is unambiguous, simple logic compels the same conclusion as to the statute. Thus, we need not go beyond the words of the statute to extrinsic aids such as legislative history. (*Lungren v. Deukmejian, supra,* 45 Cal.3d 727, 735.) To do so would violate the principle that, "When statutory language is thus clear and unambiguous there is no need for construction, and *courts should not indulge in it.*" (*Solberg v. Superior Court* (1977) 19 Cal.3d 182, 198 [137 Cal.Rptr. 460, 561 P.2d 1148], italics added.) This rule is deeply rooted in our jurisprudence. (*Sturges v. Crowninshield* (1819) 17 U.S. 122, 202 [4 L.Ed. 529, 550].) FN10

FN10 The dissenting Court of Appeal justice

in this case also noted the well-established principle of not going beyond clear and unambiguous language to determine the intent of the Legislature or voters.

(9)**(See fn. 11.)**Second, in light of the voters' incorporation of the statutory language into the California Constitution, we need construe only article I, section 2(b). [FN11] The legislative history of section 1070 would be ***801** relevant only if it shed some light on the meaning of its constitutional counterpart, article I, section 2(b). The history, however, is of no help in that regard. Article I, section 2(b) is plain on its face, and we need not - indeed, should not - search for external indicia of the voters' intent. (*Lungren v. Deukmejian, supra,* 45 Cal.3d 727, 735.) Moreover, the *legislative* history of section 1070 could, as a matter of logic, reflect only the *Legislature's* intent. (10, 11) **(See fn. 12.)**That history would not provide us with any guidance as to *the voters'* subsequent intent because none of the indicia of the Legislature's possible intent (committee analysis and digest and letters from the statute's author) were before the voters. (*People v. Castro* (1985) 38 Cal.3d 301, 311-312 [211 Cal.Rptr. 719, 696 P.2d 111]; *Lungren v. Deukmejian, supra,* 45 Cal.3d 727, 742.) [FN12]

FN11 There are only three possible conclusions as to the relationship between section 1070 and article I, section 2(b): (1) they have the same scope; (2) the statute is narrower; or (3) the statute is broader. Each conclusion effectively moots the statute. If section 1070 and article I, section 2(b) have the same scope, the statute serves no practical purpose. If section 1070 were *narrower* than article I, section 2(b) - that is, if the statute applied only to confidential information - the statute would have to yield to the broader constitutional provision. The Legislature could not restrict the shield law placed by the voters into the Constitution because, "Wherever statutes conflict with constitutional provisions, the latter must prevail." (*People v. Navarro* (1972) 7 Cal.3d 248, 260 [102 Cal.Rptr. 137, 497 P.2d 481].) The third conclusion - that the statute is *broader* than the Constitution - is not a logical possibility. Because we construe article I, section 2(b) as applying to both confidential and nonconfidential information, there is nothing more the statute could include. In short, the result mandated by article I, section 2(b) renders moot the scope of section 1070. Use of legislative history to determine the scope of the statute would therefore serve no purpose.

FN12 Justice Broussard's concurring opinion contends we should rely on the legislative history of section 1070 to find the meaning of its constitutional counterpart, article I, section 2(b). The concurrence does not take issue, however, with our explanation that such history could have no practical effect on our decision. Moreover, the concurrence's reliance on *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 847-851 [59 Cal.Rptr. 609, 428 P.2d 593], is misplaced. In that case, we considered a lengthy history of judicial decisions consistently construing the statutory (and virtually identical) predecessor of a constitutional provision. There is no similar history for section 1070. Indeed, we have never before construed the substantive scope of section 1070. (*Post,* at p. 803, fn. 16.)

The concurrence does not identify any sources of legislative history. The only sources we know are an analysis by the Senate Committee on the Judiciary of a 1974 amendment (Sen. Bill No. 1858) to section 1070, a digest of the amendment by the Assembly Committee on the Judiciary, and letters written by Senator Al Song, the amendment's sponsor. In *City of Sacramento* v. *State of California, ante,* 51 [266 Cal.Rptr. 139, 785 P.2d 522], on which the concurrence also relies, we noted a prior decision in which we had relied on the history of the statutory forerunner of a constitutional provision. (*Id.,* at p. 67, fn. 11.)In that prior decision - *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] - we made clear, as we do in the present case, that legislative materials not before the voters are not relevant to determining *the voters'* intent. (*Id.,* at p. 54, fn. 6 and p. 56.)We also explained that the constitutional language before us was quite vague. (*Id.,* at p. 57.)Resort to extrinsic sources of meaning was thus appropriate.

> Justice Broussard agrees that article I, section 2(b) is unambiguous.
>
> To the extent the concurrence suggests we should rely on letters from Senator Song, we decline for the further reason that we do not consider the motives or understandings of an individual legislator even if he or she authored the statute. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589 [128 Cal.Rptr. 427, 546 P.2d 1371].)

Delaney also relies on the ballot argument in favor of Proposition 5 in 1980, the measure that created article I, section 2(b). (12) Ballot arguments are accepted sources from which to ascertain the voters' intent. (*In* ***802** *re Lance W.* (1985) 37 Cal.3d 873, 888, fn. 8 [210 Cal.Rptr. 631, 694 P.2d 744]; *White v. Davis* (1975) 13 Cal.3d 757, 775, fn. 11 [120 Cal.Rptr. 94, 533 P.2d 222].) As with the legislative history of section 1070, however, we need not look beyond the language of the enactment (article I, section 2(b)) when its language is unambiguous. (*Lungren v. Deukmejian*, *supra*, 45 Cal.3d 727, 735.) The ballot argument (unlike the legislative history) is, however, at least relevant to determining *the voters'* intent. (2f) We therefore consider the ballot argument (set forth in full in the margin) to determine if it demonstrates the voters did not mean what they said. [FN13]The repeated references in the argument to confidentiality and the like permit the inference the proponents of the measure intended to protect only confidential information. The same inference may be drawn from the Legislative Analyst's statement. [FN14]The inference, however, is far from compelling. The ballot materials emphasized the need for confidentiality but did not state that *only* confidential matters would be protected. The most reasonable inference is that the proponents chose to emphasize (in the limited space available for ballot arguments) what they perceived as the greatest need. We cannot conclude that, by emphasizing one purpose, perhaps the primary purpose of the measure, the argument misled voters into thinking confidentiality was ***803** the only purpose, especially when the measure itself made clear that all unpublished information would be protected. Moreover, a possible inference based on the ballot argument is an insufficient basis on which to ignore the unrestricted and unambiguous language of the measure itself. It would be a strained approach to constitutional analysis if we were to give more weight to a possible inference in an extrinsic source (a ballot argument) than to a clear statement in the Constitution itself. We decline to do so. [FN15]

> FN13 The ballot argument stated: "The free flow of information to the public is one of the most fundamental cornerstones assuring freedom in America. Guarantees must be provided so that information to the people is not inhibited. However, that flow is currently being threatened by actions of some members of the California Judiciary. They have created exceptions to the current Newsman's Shield Law, which protects the confidentiality of reporters' news sources. And the use of confidential sources is critical to the gathering of news. *Unfortunately, if this right is not protected, the real losers will be all Californians who rely on the unrestrained dissemination of information by the news media*. [¶] This amendment merely places into the state's Constitution protection already afforded journalists by statute. That law [section 1070], enacted in 1935, in clear and straightforward language, provides that reporters cannot be held in contempt of court for refusing to reveal confidential sources of information. At least six reporters in California in recent years have spent time in jail rather than disclose their sources to a judge. By giving existing law constitutional status, judges will have to give the protection greater weight before attempting to compel reporters to breach their pledges of confidentiality. [¶] A reporter's job, of course, is not to withhold information, but to convey it to the public. In most cases, a reporter is able to reveal corruption and malfeasance within government only with the help of an honest employee. If such an individual feels that a reporter's pledge of confidentiality may be broken under the threat of jail, that person simply will not come forward with his or her information. [¶] If our democratic form of government - of the people, by the people, for the people - is to survive, citizens must be informed. *A free press protects our basic liberties by serving as the watchdogs of our nation*. Citizens may agree or disagree with reports in the media, but they have been informed, and the final choice is made by the individual. [¶] To jail a journalist because he

protected his source is an assault not only on the press but on all Californians as well." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec. (June 3, 1980) p. 19, italics in original.)

FN14 The Legislative Analyst's statement read: "Since 1935, laws enacted by the California Legislature have protected the confidential information sources of persons employed by or connected with the news media .... [¶] This measure would place in the California Constitution provisions of existing law enacted by the Legislature to protect news sources ...." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec., *supra*, p. 18.)

FN15 We requested the parties to submit supplemental briefs on the issue of whether section 1070 is an unconstitutional usurpation of the California judiciary's inherent power to punish contempt. Because the scope of section 1070 is rendered moot as a practical matter by our construction of article I, section 2(b) (*ante*, pp. 800-801, fn. 11), we need not and do not decide this issue, which would arise only if section 1070 were amended so that it were somehow broader than article I, section 2(b).

C. *Prior California decisions*

Although the relevant amendment to section 1070 was enacted in 1974 and article I, section 2(b) was adopted in 1980, this court has never determined the substantive scope of either provision. [FN16]The Courts of Appeal, however, have often done so. Initially, the clear majority view in published decisions was that the shield law applies equally to nonconfidential as well as confidential information. (*Hammarley* v. *Superior Court, supra*, 89 Cal.App.3d 388, 395-398; *Playboy Enterprises, Inc. v. Superior Court, supra*, 154 Cal.App.3d 14, 20-22; *Hallissy* v. *Superior Court, supra*, 200 Cal.App.3d 1038.) Only one court had restricted the shield law's application to confidential information. (*CBS, Inc. v. Superior Court, supra*, 85 Cal.App.3d 241, 250.)

FN16 Indeed, we have never construed the substantive scope of section 1070 in any of its previous forms, even though it was enacted more than 50 years ago. We briefly considered the procedural scope of section 1070 and article I, section 2(b) in *Mitchell v. Superior Court, supra*, 37 Cal.3d 268, 274, in which we observed that neither provision protects a newsperson who is a party to an action from sanctions other than contempt.

More recently, however, the conflict began to sharpen. In an opinion certified for publication, the Court of Appeal in this case held the shield law applies only to confidential information. Only two weeks earlier, however, a different division of the same district reached a contrary conclusion in an opinion also certified for publication, holding that the shield law protects against the compelled disclosure of any unpublished information, regardless of whether it is confidential. (*New York Times Co. v. Superior Court* (1988) 215 Cal.App.3d 672 [248 Cal.Rptr. 426], review granted Oct. 27, 1988 (S006709).) We granted review in both cases to resolve the growing conflict. A third Court of Appeal panel thereafter certified for publication an opinion noting the conflict and agreeing with the Court of Appeal decision in this case, holding that a reporter's eyewitness observations of a public event are ***804** not protected by the shield law. (*Liggett* v. *Superior Court* (1989) 211 Cal.App.3d 1461 [260 Cal.Rptr. 161], review granted Oct. 12, 1989 (S011581).)

In light of the conflict that has emerged, the Court of Appeal decisions provide little clear guidance for our decision, and little would be gained by our reviewing them in detail. We note, however, two general themes that appear in the conflict. As we have done in this case, the courts that have applied the shield law to all information have relied on the explicit language of the shield law. (*Playboy Enterprises, Inc.* v. *Superior Court, supra*, 154 Cal.App.3d 14, 20-22; *Hammarley* v. *Superior Court, supra*, 89 Cal.App.3d 388, 395-398.)

By contrast, the courts that have restricted the shield law to confidential information have paid insufficient attention to the shield law's language. For example, in *CBS, Inc. v. Superior Court, supra*, 85 Cal.App.3d 241, 250, the court seemed to conclude that no purpose would be served by protecting nonconfidential information. The court did not explain how it found in the shield law a purpose to protect only confidential

information. In this case and in *Liggett v. Superior Court, supra*, 211 Cal.App.3d 1461, review granted October 12, 1989 (S011581), the courts relied extensively on the legislative history of section 1070 and the ballot argument for article I, section 2(b). As we have already explained (*ante*, pp. 800-803), there is no need to resort to extrinsic aids when a provision is unambiguous and, in any event, the ballot argument and legislative history in this case are too equivocal to overcome the clear definition of "unpublished information" in article I, section 2(b)'s language. We disapprove of those Court of Appeal decisions that hold or suggest the shield law protects only confidential information.

D. *Public policy*

The parties correctly approach this case as being one of application of a specific constitutional provision. Implicit in their respective arguments, however, are conflicting notions as to appropriate public policy in protecting a newsperson's unpublished information. We need not consider this issue. As we have explained, article I, section 2(b) contains an unambiguous definition of "unpublished information." (13) It is bedrock law that if "the law-maker gives us an express definition, we must take it as we find it ...." (*Bird v. Dennison* (1857) 7 Cal. 297, 307.) (14) "[C]ourts, in construing the constitution, are bound to suppose that any inconveniences involved in the application of its provisions, according to their plain terms and import, were considered in its formation, and voluntarily accepted as less intolerable than those which are thereby avoided, or as fully compensated by countervailing advantages." (***805***People v. Pendegast* (1892) 96 Cal. 289, 294 [31 P. 103]; *Sturges v. Crowninshield, supra*, 17 U.S. 122, 202 [4 L.Ed. 529, 550].) Our proper function is not to judge the wisdom of article I, section 2(b) or the way in which it is written.

E. *Conclusion as to scope of shield law*

(2g) We hold that article I, section 2(b) is not contingent on a showing that a newsperson's unpublished information was obtained in confidence.Article I, section 2(b)'s definition of "unpublished information" includes a newsperson's nonconfidential, eyewitness observations of an occurrence in a public place. [FN17]

FN17 Of course, a person claiming the protection of the shield law must meet all its other requirements. He must show that he is one of the types of persons enumerated in the law, that the information was "obtained or prepared in gathering, receiving or processing of information for communication to the public," and that the information has not been "disseminated to the public by the person from whom disclosure is sought." (Art. I, § 2(b).)

III. *Delaney's Constitutional Rights*

Our determination that the reporters' observations of the police search are "unpublished information" within the scope of article I, section 2(b) does not decide the issue of whether the municipal court properly held the reporters in contempt for refusing to disclose that information. (15) The reporters themselves concede, as they must, that the shield law's protection is overcome in a criminal proceeding on a showing that nondisclosure would deprive the defendant of his federal constitutional right to a fair trial. Although this court has not decided a case involving the application of the shield law in a criminal prosecution, the principle is beyond question. (*CBS, Inc. v. Superior Court, supra*, 85 Cal.App.3d 241, 251; *Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038; *Playboy Enterprises, Inc. v. Superior Court, supra*, 154 Cal.App.3d 14, 24-25; *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 402; cf. *People v. Borunda* (1974) 11 Cal.3d 523, 527 [113 Cal.Rptr. 825, 522 P.2d 1] [defendant seeking identity of anonymous informant].) [FN18] The incorporation of the shield law into the California ***806** Constitution cannot restrict a criminal defendant's *federal* constitutional right to a fair trial. (*Mulkey* v. *Reitman* (1966) 64 Cal.2d 529, 533 [50 Cal.Rptr. 881, 413 P.2d 825],affd. (1967) 387 U.S. 369 [18 L.Ed.2d 830, 87 S.Ct. 1627] [explaining that California constitutional amendment adopted by ballot must conform to the United States Constitution].) Such result would violate the supremacy clauses of the federal and state Constitutions. (U.S. Const., art. VI, cl. 2; Cal. Const., art. III, § 1; *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 399, fn. 4.) [FN19]

FN18 Courts have stated almost without exception that a criminal defendant's right to information arises at least in part from the

Sixth Amendment to the United States Constitution. (See, e.g., *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 398.) For the most part, they explicitly or implicitly refer to the compulsory process and confrontation clauses. In light of recent Supreme Court authority, the reference to the Sixth Amendment may be incorrect in a couple of respects. In *Pennsylvania v. Ritchie* (1987) 480 U.S. 39 [94 L.Ed.2d 40, 107 S.Ct. 989], the Pennsylvania Supreme Court had ruled that a lower court's refusal to order the disclosure of a state agency's confidential files in a child abuse investigation violated the confrontation and compulsory process clauses of the Sixth Amendment. A plurality of the high court concluded that the confrontation clause does not apply to pretrial discovery. (*Id.*, at pp. 52-53 [94 L.Ed.2d at pp. 54-55].) As in this case, the shield law is often raised as a pretrial issue, e.g., at a preliminary hearing. Under *Ritchie*, it may no longer be accurate to refer to a defendant's Sixth Amendment right in such circumstances. (But see *Kentucky v. Stincer* (1987) 482 U.S. 730, 738-739, fn. 9 [96 L.Ed.2d 631, 642-644, 107 S.Ct. 2658] [suggesting in dictum that confrontation clause might in some cases apply to pretrial discovery].) The better practice may be to refer to the right as arising under the due process clause of the Fourteenth Amendment. Similarly, a majority of the *Ritchie* court also found considerable doubt as to whether the compulsory process clause gives a defendant a right to discover the identity of witnesses or to require the state to produce exculpatory evidence. (480 U.S. at p. 56 [94 L.Ed.2d at pp. 56-57].) The court concluded that the better analysis is under the due process clause of the Fourteenth Amendment. Although we note the high court's distinctions for the purpose of accuracy, we find no suggestion in *Ritchie* that the scope of a defendant's right to a fair trial is affected by the label attached to it.

FN19 We need not and do not decide whether a newsperson's rights under article I, section 2(b) could be outweighed by a criminal defendant's rights under article I, section 15 of the California Constitution.

(16)**(See fn. 20.)**, (17a) The parties disagree, however, as to the nature of the showing a criminal defendant must make to overcome a claim of immunity under the shield law. [FN20]Delaney contends he need establish only a reasonable possibility that the evidence sought to be discovered might result in his exoneration. The reporters propose a more complex, four-part test under which a defendant would have to show the following: (1) The information must go to the heart of defendant's case. (2) The information must have a significant effect on the outcome of the case. (This proposed element seems to be the same as the "heart-of-the-case" element.) (3) The information is not available from alternative sources. (4) The infringement on the defendant's rights caused by nondisclosure must outweigh the newsperson's interests. (This element seems to be the conclusion a court would reach under the test rather than an element of the test.) As we will ***807** explain, precedent and principle lead us to conclude that neither test is entirely warranted.

FN20 We think it helpful to note the proper procedure for resolving a claim of immunity under the shield law. It is hornbook law that a person claiming a privilege bears the burden of proving he is entitled to the privilege. (*Sharon* v. *Sharon* (1889) 79 Cal. 633, 677-678 [22 P. 26]; *Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940-941 [191 Cal.Rptr. 425]; 2 Witkin, Cal. Evidence (2d ed. 1986) § 1086, pp. 1030-1031.) Pursuant to its terms, the shield law provides only an immunity from contempt, not a privilege. (*Ante*, at p. 797, fn. 6.) This distinction, however, is not relevant to assigning the burden. Regardless of the label used (privilege or immunity), the shield law's purpose is the same - to protect a newsperson's ability to gather and report the news. The newsperson seeking immunity must prove all the requirements of the shield law have been met. The burden then shifts to the criminal defendant seeking discovery to make the showing required to overcome the shield law. (*Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 399.) It is the nature of a defendant's showing that we address in the remainder of this opinion.

A. *The proper test for accommodating conflicting constitutional rights*

To formulate the proper test we begin with our decision in *Mitchell v. Superior Court, supra,* 37 Cal.3d 268, in which we set forth a balancing test to determine when a reporter must disclose confidential information. We identified four relevant factors for a trial court to consider when making that determination. First, we noted the nature of the proceeding and observed that, "In general, disclosure is appropriate in civil cases, especially when a reporter is a party to the litigation." (*Id.,* at p. 279.)Second, the *Mitchell* court stated the information must be more than merely relevant and that it must go to "the heart of the case" for the party seeking discovery.(*Id.,* at pp. 280-282.)Third, the court stated that discovery should generally be denied unless it is shown that all alternative sources of the information have been exhausted. (*Id.,* at p. 282.)Fourth, *Mitchell* stated that the trial court should consider the importance of protecting confidentiality in the case at hand. (*Id.,* at pp. 282-283.)

Although *Mitchell,* a defamation action, helps to illustrate the competing concerns that arise when a litigant seeks information from a newsperson, an identical approach is not entirely appropriate in a criminal proceeding. We were careful to emphasize in *Mitchell* that "In criminal proceedings, both the interest of the state in law enforcement, recognized as a compelling interest in *Branzburg* (see 408 U.S. 665, 700 [33 L.Ed.2d 626, 650]), and the interest of the defendant in discovering exonerating evidence outweigh any interest asserted in ordinary civil litigation." (*Mitchell, supra,* 37 Cal.3d at p. 278.) We did not consider the factors a court should consider in a criminal case.

1. *Threshold showing required*

In now deciding the issue, we must first consider the threshold showing a criminal defendant must make. The reporters claim Delaney must show their testimony would go to the "heart of his case." He contends he need show only a reasonable possibility the evidence might result in his exoneration. On this point, Delaney has the better view. In *CBS, Inc. v. Superior Court, supra,* 85 Cal.App.3d 241, the court explained, "Against this right [of a free press] we are obliged to measure the threat to defendants' right to a fair trial. The existence of such a right is clear .... [I]t has resulted in the rule that, where a criminal defendant has demonstrated a *reasonable possibility* that evidence sought to be discovered might result in his exoneration, ***808** he is entitled to its discovery." (*Id.,* at p. 251, italics in original; *Hallissy v. Superior Court, supra,* 200 Cal.App.3d 1038, 1045.) Similarly, in *Hammarley v. Superior Court, supra,* 89 Cal.App.3d 388, the court stated, "'Allowing an accused the right to discover is based on the fundamental proposition that he is entitled to a fair trial and an intelligent defense in light of *all relevant* and reasonably accessible information.'" (*Id.,* at pp. 398-399, quoting *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 535 [113 Cal.Rptr. 897, 522 P.2d 305], italics added.)

We hold that, to overcome a prima facie showing by a newsperson that he is entitled to withhold information under the shield law, a criminal defendant must show a *reasonable possibility* the information will materially assist his defense. A criminal defendant is not required to show that the information goes to the heart of his case. [FN21]

FN21 It has been stated that the information must be relevant. (*Hallissy v. Superior Court, supra,* 200 Cal.App.3d 1038, 1046.) This observation is correct but potentially misleading to the extent it suggests the relevancy requirement arises from the shield law. It does not. The requirement applies to all evidence, whatever its source. (Evid. Code, § 350.)Thus, it is superfluous to state that relevancy is required in shield law cases.

(18) A criminal defendant's constitutional right to compulsory process was intended to permit him to request governmental assistance in obtaining likely helpful evidence, not just evidence that he can show beforehand will go to the heart of his case. "The need to develop *all relevant facts* in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of *all the facts,* within the framework of the rules of evidence." (*United States v. Nixon* (1974) 418 U.S. 683, 709 [41 L.Ed.2d 1039, 1064, 94 S.Ct. 3090], italics added [claim of presidential privilege].) [FN22]

FN22 In *Hammarley v. Superior Court, su-*

pra, 89 Cal.App.3d 388, 399, and *Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038, 1045-1046, the Courts of Appeal stated that a criminal defendant must also show the evidence is "necessary" to his defense. This restriction might appear to be inconsistent with those courts' concurrent observations that a defendant is entitled to all relevant evidence. Properly understood, however, there is no inconsistency. The *Hammarley* and *Hallissy* courts were referring to two separate factors - the threshold showing required and whether the reporter's information was necessary in the sense that it was unobtainable from another source. Those courts' references to "necessary" information cannot be fairly read to mean information that goes to the heart of a criminal defendant's case, especially in light of their observations as to the need for all relevant evidence. Indeed, neither court determined that the information at issue went to the "heart of the case." Nor did they even use the term. As to the threshold showing required, the decisions are consistent with the test we adopt in this case.

The "reasonable possibility" requirement is also far more workable than the "heart of the case" test proposed by the reporters. It would be impractical ***809** to require a trial court to attempt to divine whether the evidence sought from the newsperson would cause a jury to exonerate a criminal defendant. A court cannot be expected to have that degree of prescience. Moreover, if applied literally, the "heart of the case" requirement would allow a defendant to obtain only evidence that would support a directed verdict in his favor.

(19a) To provide guidance to the trial courts, we believe it helpful to make clear how the threshold requirement must be applied in practice. First, the burden is on the criminal defendant to make the required showing. (*Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038, 1045.) Second, the defendant's showing need not be detailed or specific, but it must rest on more than mere speculation. Third, the defendant need not show a reasonable possibility the information will lead *to his exoneration*. He need show only a reasonable possibility the information will materially *assist his defense*. The distinction between exoneration and assisting the defense is significant. (20) "Exoneration" means "the removal of a burden, charge, responsibility, or duty." (Black's Law Dict. (5th ed. 1979) p. 516, col. 2.) Stated more simply, in criminal proceedings, "exoneration" is generally understood to mean an acquittal or dismissal of charges. (19b) Evidence, however, may be critical to a defense even if it will not lead to exoneration. For example, evidence may establish an "imperfect defense," a lesser included offense, a lesser related offense, or a lesser degree of the same crime; impeach the credibility of a prosecution witness; or, as in capital cases, establish mitigating circumstances relevant to the penalty determination. A criminal defendant's constitutional right to a fair trial includes these aspects of his defense. [FN23]

FN23 We need not and do not in this case attempt to enumerate all the ways in which evidence might materially assist a defense. We also need not and do not decide or suggest that traditional testimonial privileges (e.g., attorney-client privilege) should in some circumstances yield to a criminal defendant's federal constitutional right to a fair trial. As Justice Mosk's concurring opinion notes, such privileges may be entitled to greater deference than a newsperson's immunity. (Conc. opn., *post*, at p. 819, fn. 2.)

2. *Factors to consider*

(17b) By meeting the threshold requirement, a defendant is not necessarily entitled to a newsperson's unpublished information. The trial court must then consider the importance of protecting the unpublished information. (*Mitchell, supra*, 37 Cal.3d at pp. 282-283.) This determination may properly be characterized as a balancing of the defendant's and newsperson's respective, perhaps conflicting, interests. [FN24]The factors to be considered in making this determination are as follows: ***810**

FN24 Justice Mosk's concurrence rejects a balancing approach in favor of a rigid two-part determination. (Conc. opn., *post*, at p. 818.)He agrees a defendant must show a reasonable possibility the information will materially assist his defense. The concurrence, however, states that, once this showing has been made, the defendant is absolutely entitled to the information if there are

no "alternative sources of substantially similar information." This approach would provide scant protection to the newsperson, certainly far less than provided by the balancing approach. Under the concurrence, a newsperson could be compelled to disclose highly confidential information, e.g., the name of a witness whose life would be endangered by disclosure. Our balancing approach, however, allows the trial court to consider the importance of keeping information confidential. The concurrence would mandate disclosure no matter how harmful it would be. The concurrence also considers only the defendant's federal constitutional rights and ignores the newsperson's state constitutional rights under the shield law. Rather than merely ignoring our shield law, we think it appropriate to attempt to apply it consistently with the federal Constitution.

(a) *Whether the unpublished information is confidential or sensitive*

If the information is not confidential, the court should consider whether it is nevertheless sensitive, that is, whether its disclosure would somehow unduly restrict the newsperson's access to future sources and information. (We hereafter refer to this type of nonconfidential information as "sensitive information.") [FN25] Generally, nonconfidential or nonsensitive information will be less worthy of protection than confidential or sensitive information. Disclosure of the latter types of information will more likely have a significant effect on the newsperson's future ability to gather news. (*U.S. v. LaRouche Campaign* (1st Cir. 1988) 841 F.2d 1176, 1180-1182 [noting slight deference due nonconfidential information].) The protection of that ability is the primary purpose of the shield law. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec., *supra*, p. 19; see *ante*, at p. 802, fn. 13.) [FN26]

FN25 To illustrate this type of nonconfidential but sensitive information, we use an example. Assume a reporter is investigating corruption in city government. He obtains information from a city employee who agrees to be quoted and identified. Even so, disclosure of this information in some circumstances might unduly restrict the reporter's ability to complete the story. If he were forced to disclose the source's identity before the articles were published and the source's employment was terminated as a result, other sources might cease to cooperate. That the information sought is not confidential does not necessarily mean it is not sensitive and equally worthy of protection from disclosure.

FN26 By emphasizing the need to be especially cautious in ordering disclosure of confidential or sensitive information, we do not suggest that nonconfidential information is entitled to no protection. As we have held above (*ante*, at p. 805), the plain language of the shield law includes nonconfidential information.

(b) *The interests sought to be protected by the shield law*

Even if the information was sensitive or obtained in confidence, other circumstances may, as a practical matter, render moot the need to avoid disclosure. If, as in this case, the criminal defendant seeking disclosure is himself the source of the information, it cannot be seriously argued that the source (the defendant) will feel that his confidence has been breached. [FN27] The ***811** reporter's news-gathering ability will not be prejudiced. Other circumstances may also mitigate or eliminate the adverse consequences of disclosure. We do not purport to decide the significance to be given to any future set of facts before a trial court. The point is simply that a trial court must determine whether the policy of the shield law will in fact be thwarted by disclosure.

FN27 Such was the situation in *Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038. A reporter published a story based on an interview with a criminal defendant that led to additional charges being filed against him. He sought to question the reporter to show the published statements were inconsistent with other statements the defendant had made to the reporter. The trial court correctly noted that "The source of the information is the very person who is seeking the full disclosure." (*Id.*, at p. 1042.)The Court of Appeal, however, paid no heed to this circumstance in reversing an order of contempt

against the reporter. As explained above, such circumstance is significant. We disapprove of *Hallissy* to the extent it did not consider the fact that the party seeking disclosure was the source of the unpublished information.

(c) *The importance of the information to the criminal defendant*

A defendant in a given case may be able not only to meet but to exceed the threshold "reasonable possibility" requirement. For example, he may be able to show that the evidence would be dispositive in his favor, i.e., to use the reporters' phrase, that it goes to "the heart of defendant's case." If so, the balance will weigh more heavily in favor of disclosure than if he could show only a reasonable possibility the evidence would assist his defense.

(d) *Whether there is an alternative source for the unpublished information*

We stated in *Mitchell, supra,* 37 Cal.3d 268, 282, that discovery of a reporter's confidential information should be denied unless the party seeking it "has exhausted all alternative sources of obtaining the needed information." This requirement has also been imposed on criminal defendants. (*Hammarley v. Superior Court, supra,* 89 Cal.App.3d 388, 399; *Hallissy v. Superior Court, supra,* 200 Cal.App.3d 1038, 1045-1046.) Whether there is an alternative source is indeed a factor for the trial court to consider in a criminal proceeding. In light of a defendant's constitutional right to a fair trial, however, *Mitchell*, a civil case, does not mandate a rigid alternative-source requirement in criminal proceedings.

The facts in *Mitchell, supra,* 37 Cal.3d 268, also suggest the alternative-source requirement may not always be appropriate. In *Mitchell*, the plaintiff sought documents that would reveal confidential sources of information.(*Id.*, at p. 272.) [FN28]The obvious purpose of the alternative-source requirement ***812** is to protect against unnecessary disclosure of a newsperson's confidential or sensitive information. Where the information is shown to be not confidential or sensitive, the primary basis for the requirement is not present and imposing a rigid requirement would be to sustain a rule without a reason. As we have explained above, the proper balancing in a criminal case must take into account whether the unpublished information is confidential or sensitive and, if so, the importance of protecting the information in a given case. (*Ante,* at pp. 810-811.) For the same reason, a trial court should consider the nature of the information in determining whether to impose an absolute alternative-source requirement in a given case.

FN28 In the other cases cited by the reporters as support for a rigid alternative-source requirement, there was no indication that the information was not confidential. (*United States v. Burke* (2d Cir. 1983) 700 F.2d 70, 76-77; *United States v. Hubbard* (D.D.C. 1979) 493 F.Supp. 202, 205; *State v. Boiardo* (1980) 82 N.J. 446 [414 A.2d 14, 18-19].)

We also note that in *Mitchell, supra,* 37 Cal.3d 268, the information request was for documents that would reveal the identity of possible witnesses. We noted that the names of these persons likely could be obtained from sources other than the newsperson. Objective evidence of that nature is likely unaffected by its source. The contents of a document do not depend on the source of the document (assuming no alteration). Similarly, the name of a witness is the same regardless of who provides the name. The evidence sought by Delaney in this case, however, is qualitatively different from that sought in *Mitchell*.Delaney seeks the reporters' testimony as to their percipient observations of the events leading to his search and arrest. Two witnesses to an act may - indeed, likely do - see it differently, and even when their perceptions are substantially the same, their recollection of the event may differ. Moreover, even if their testimony is substantively similar, one witness may have more credibility with a jury. Likewise, two witnesses may convince the jury of a fact where one witness by himself would not do so.

Finally, we note a significant practical difference between this case and *Mitchell, supra,* 37 Cal.3d 268. That case arose out of a pretrial discovery order in a civil case. In light of the wide range of procedures available for pretrial discovery in civil litigation, it is not unreasonable to require a party seeking information from a newsperson to look elsewhere first. There are no similar procedures available to a criminal defendant. For example, he cannot compel a witness's attendance at a deposition and, if unsuccessful in obtaining information, subpoena a different witness.

Moreover, the economic reality of the criminal justice system is such that a criminal defendant will generally have less opportunity than a civil litigant to obtain information before trial.

(21) For all the foregoing reasons, we conclude that a universal and inflexible alternative-source requirement is inappropriate in a criminal proceeding. In considering whether the requirement is appropriate in a given case, the trial court should consider the type of information being sought ***813** (e.g., names of potential witnesses, documents, a reporter's eyewitness observations), the quality of the alternative source, and the practicality of obtaining the information from the alternative source. The trial court must also consider the other balancing factors set forth above: whether the information is confidential or sensitive, the interests sought to be protected by the shield law, and the importance of the information to the criminal defendant. In short, whether an alternative-source requirement applies will depend on the facts of each case. [FN29]

FN29 We disapprove of suggestions by the Courts of Appeal that a criminal defendant must in every case show the lack of an alternative source regardless of the circumstances. (*Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 399; *Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038, 1046.)

3. *Balancing the factors*

(17c) Although a trial court must consider the foregoing factors, their relative importance will likely vary from case to case. In some cases, as in the present one, all the factors may weigh strongly in favor of disclosure. In others, the balance may be more even, and in some cases one factor may be so compelling as to outweigh all the others. We decline to hold in the abstract that any factor or combination of factors must be determinative. A mechanistic, checklist approach would not in the long run (nor perhaps even in a particular case) serve the best interests of either newspersons or criminal defendants.

4. *Whether an in camera hearing is required*

The reporters contend an in camera hearing must be held in every case before a newsperson can be forced to disclose unpublished information. The contention is overbroad. The purpose of an in camera hearing is to protect against unnecessary disclosure of confidential or sensitive information. The reporters fail to explain what purpose an in camera hearing would serve when the information, as in this case, is admittedly not confidential or sensitive. [FN30] In the cases cited by the reporters, the information was at least arguably confidential. For example, in *CBS, Inc. v. Superior Court, supra*, 85 Cal.App.3d 241, the Court of Appeal remanded to the trial court for an in camera hearing but noted the newspersons' "claimed pledge of secrecy." (*Id.*, at p. 254.)The reporters' reliance on *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, in which the court affirmed a contempt judgment, is even more misplaced. In *Hammarley*, the newsperson argued that the shield law immunity was absolute and that an in camera hearing should ***814** not have been allowed. The Court of Appeal concluded to the contrary. (*Id.*, at pp. 402-403.)The decision in no way supports the view that an in camera hearing is required in every case. [FN31]

FN30 Aside from the lack of a need to protect secrets, there is no practical difference in terms of inconvenience to the newsperson. Whether he testifies in open court or in camera, the same amount of his time ordinarily will be required.

FN31 In the other decisions on which the reporters rely, the information also appears to have been confidential. The precise nature of the information is not explained in each of those decisions, but the courts emphasized the need to protect confidential information, and there were no allegations that the information was not confidential. (*United States v. Cuthbertson* (3d Cir. 1981) 651 F.2d 189, 195-196; *United States v. Burke, supra*, 700 F.2d 70, 76-77;*United States* v. *Hubbard, supra*, 493 F.Supp. 202, 205; *Green Bay Newspaper v. Circuit Court* (1983) 113 Wis.2d 411 [335 N.W.2d 367].)

When a criminal defendant, however, seeks confidential or sensitive information, the practical need for an in camera hearing is obvious. The shield law would be illusory if a reporter had to publicly disclose confidential or sensitive information in order for a court to determine whether it should remain confidential or

sensitive. We emphasize, however, that a trial court need not waste its valuable resources for an in camera hearing based on a specious claim of confidentiality or sensitivity. [FN32]The court has discretion in the first instance to determine whether a newsperson's claim of confidentiality or sensitivity is colorable. If the court determines the claim is colorable, it must then receive the newsperson's testimony in camera.

> FN32 For example, a newsperson cannot create confidentiality or sensitivity where there is none. Assume that a reporter covering a hockey game witnesses, together with everyone else present, a brawl on the ice that results in criminal charges against a player. If the shield law applied in such circumstance, a trial court would not be required to proceed in camera based on the reporter's assertion that he viewed the game or the fight in confidence.

B. *Application of the proper test to this case*

(22) Under the proper balancing test set forth above, Delaney was clearly entitled to the reporters' testimony as to whether he consented to the police search of his jacket.

Threshold showing - Even under the test advocated by the reporters (heart of the case), Delaney would be entitled to their testimony. The municipal court explained to the reporters' counsel the lack of probable cause for the search: “If there were probable cause for the search, I guarantee you the prosecutor would not be introducing the matter of [Delaney's] consent.” The court explained that if there was no consent the search was therefore illegal, and the charge against Delaney would have to be dismissed. Conversely, if he consented to the search, it was legal, the brass knuckles would be admitted into evidence, and Delaney would have little chance of an acquittal. As the court put it, the case “will rise or fall on the admission or not of those metal knuckles.” We agree. It is an understatement to say, in the words of the test we adopt, that there is a reasonable ***815** possibility the reporters' testimony will assist Delaney in his defense. There is a substantial certainty that the reporters' testimony will materially affect the outcome of the criminal proceeding. Delaney has met and surpassed the required threshold showing.

Balancing factors - The balance weighs overwhelmingly in favor of requiring the reporters to testify. A brief review of the factors to be balanced makes this clear.

(1) Whether the unpublished information is confidential or senstitive - As we have already noted, the reporters do not claim their percipient observations of Delaney's search and arrest in a public place were made in confidence or were sensitive.

(2) The interests sought to be protected by the shield law - There is not even a suggestion in this case that the reporters' testimony would impinge on their future news-gathering ability or other interest, if any, sought to be protected by the shield law. Both parties who were observed by the reporters (Delaney and the police) are seeking their testimony. Thus, it cannot be said the parties or anyone else would be reluctant to provide these reporters with future information based on a belief that the reporters had breached a confidence or divulged sensitive information.

(3) The importance of the information to the criminal defendant - As explained above, the reporters' testimony will likely be determinative of the outcome of this case.

(4) Whether there is an alternative source for the unpublished information - We have explained that a criminal defendant need not always show the lack of an alternative source for a newsperson's unpublished information. We need not consider whether such a showing was required in this case because the municipal court implicitly assumed that it was required, and Delaney made a satisfactory showing. At the hearing on the motion to suppress, the reporters' counsel suggested that Delaney be required to take the stand and testify as to whether he had consented to the search. The court promptly advised counsel as to a defendant's constitutional right not to do so. [FN33]Counsel also urged as alternative sources Delaney's companion, who was present at the time of the search, and four other officers who might have been within hearing distance of the search. The court correctly explained that neither the companion nor the other officers would be *disinterested* witnesses. The *only* two persons fitting that description are the two ***816** reporters. Thus, contrary to their assertion, their testimony would not be merely cumulative to that of the other potential witnesses. We concur in the mu-

nicipal court's determination that there was no meaningful alternative source for the reporters' testimony.

FN33 The reporters' appellate counsel also incorrectly suggest in their brief to this court that Delaney should be required to testify.

In short, the court struck the correct balance. Delaney's personal liberty is at stake. The reporters are not being asked to breach a confidence or to disclose sensitive information that would in any way even remotely restrict their news-gathering ability. All that is being required of them is to accept the civic responsibility imposed on all persons who witness alleged criminal conduct.

C. *Standard of appellate review*

(23) Finally, the reporters contend almost in passing that we are not bound by the municipal court's decision, which they characterize as being comprised of legal conclusions rather than factual findings. The reporters attack the decision on two grounds. First, they contend it is not supported by substantial evidence. We disagree. We have reviewed the record and, as set forth above, we find the municipal court's decision to be amply supported.

Second, the reporters contend we are required to exercise our independent judgment as to the correctness of the municipal court's order of contempt because important constitutional interests are at stake. Apparently, the reporters would have us hold that independent appellate judgment is mandated in all cases under the shield law. Article I, section 2(b) makes no provision for such a standard of review. Nor do the reporters cite authority from any jurisdiction requiring such review under a shield law. We need not and do not decide the issue, however, because, as noted above, we have reviewed the record, and we independently conclude without difficulty that it fully supports the municipal court's thoughtful decision. [FN34] ***817**

FN34 This case is somewhat unusual in that both Delaney and the prosecutor are seeking the reporters' testimony. (This fact further supports the municipal court's decision that the testimony is pivotal.) Although the reporters concede that a criminal defendant has a constitutional right to a fair trial, they contend, without citing any authority, that the prosecution does not have a similar right to obtain information subject to the shield law. Of course, the prosecutor vigorously disagrees. There is authority which *suggests* that a state may have a right sufficient to overcome a claim of immunity under the shield law. (*Mitchell, supra*, 37 Cal.3d 268, 278; *Branzburg, supra*, 408 U.S. 665, 700 [33 L.Ed.2d 626, 650-651]; *United States v. Nixon, supra*, 418 U.S. 683, 709 [41 L.Ed.2d 1039, 1064-1065].) In light of our determination, however, that Delaney is entitled to the reporters' testimony, the question as to the state's right to the same evidence is rendered moot. We therefore need not, and do not, decide whether the prosecution in a criminal proceeding can have a constitutional interest sufficient to require the disclosure of information otherwise protected by the shield law.

Disposition

The judgment of the Court of Appeal is affirmed. The Court of Appeal is directed to issue a peremptory writ of mandate compelling respondent Los Angeles Superior Court: (1) to vacate its orders entered December 16, 1987, in case numbers HC 206320 and HC 206321, entitled In re Roxana Kopetman and In re Roberto Santiago Bertero, respectively, which orders granted their petitions for writs of habeas corpus; and (2) to simultaneously make new and different orders denying the petitions for writs of habeas corpus.

Lucas, C. J. (as to part III), Panelli, J., Kennard, J., and Kremer (Daniel J.), J., [FN*] concurred.

FN* Presiding Justice, Court of Appeal, Fourth Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

MOSK, J.,
Concurring.

While I concur that Sean Patrick Delaney is entitled to the reporters' testimony concerning their eyewitness observations of the police search of his jacket, I do not agree with the balancing test proposed by the majority. Since federal constitutional rights are supreme, and since the reporter's constitutional immunity is absolute

on its face in protecting *all* unpublished information obtained during the course of news gathering, it is not for us to balance competing state and federal interests. Rather, our sole task is to determine how far the state constitutional immunity can be extended before it trespasses on the Fifth and Sixth Amendment rights of criminal defendants. If invocation of the constitutional immunity deprives the defendant of information necessary to exercise those rights, then he is entitled to that information in spite of the reporter's constitutional immunity. If the information is not necessary to exercise those rights, he is not so entitled.

Instead, the majority propose a complicated four-factor test to be used by courts in weighing the relative merits of reporters' and defendants' claims. Two of the factors - (a) and (b) - consider the importance of the information from the reporter's viewpoint. Factor (c) would consider the information's importance to the defendant. The fourth factor allows the trial court to consider the ease of obtaining the information from alternative sources. No single factor is to be determinative.

This balancing test harbors a basic conceptual flaw. [FN1]If our role is to determine whether the defendant can obtain a fair trial when confronted ***818** with the reporter's claim of immunity, then the significance of the information from the reporter's viewpoint is irrelevant. All that matters is the importance of the information from the *defendant's* viewpoint. Instead of delineating the boundary of the defendant's rights and permitting the reporter's immunity to apply to all information outside that boundary, as the federal and state Constitutions dictate, the majority substitute their concept of the optimal balancing of reporters' and defendants' interests. Thus, the majority favor confidential and "sensitive" information over nonconfidential, nonsensitive information, despite their earlier recognition that article I, section 2(b) makes no such distinctions.

FN1 Part of the problem with a balancing test may stem from the fact that a similar balancing approach is used in the First Amendment qualified-privilege cases, the progeny of *Branzburg v. Hayes* (1972) 408 U.S. 665 [33 L.Ed.2d 626, 92 S.Ct. 2646]. In those cases, courts, following Justice Powell's concurrence in *Branzburg*, have inquired into the impact a disclosure of information will have on the reporter's news-gathering ability. Courts had to determine at the threshold whether revelation of the information would burden reporters sufficiently to raise a First Amendment claim. (See, e.g., *U.S. v. LaRouche Campaign* (1st Cir. 1988) 841 F.2d 1176.)

In this case, the claim is not based on the First Amendment but on a specific state constitutional provision (Cal. Const., art. I, § 2, subd. (b) (hereafter article I, section 2(b)) that covers all unpublished information gathered by journalists in the course of their duties. Inquiry into the importance of the information to the reporter and the burden it would impose on him or her is not needed to determine whether the information falls within the scope of article I, section 2(b). Nor, indeed, does that provision permit such an inquiry.

For the reasons elaborated below, I would require that a defendant make two threshold showings, both of which relate to the defendant's demonstration of need for the information. First, as the majority hold, the defendant must show a reasonable possibility exists that the information will assist the truth-seeking process. Second, he must show that alternative sources of substantially similar information are unavailable. Once the defendant carries his burden of making these two showings, he will be entitled to the information. Because I conclude that information obtained by a reporter as a percipient witness of a transitory event is by its very nature unavailable from alternative sources, I concur in the majority's judgment that the defendant in this case is entitled to the reporters' testimony.

I. *The Scope of Fifth and Sixth Amendment Rights and the Alternative-source Rule*

The rights of confrontation and compulsory process under the Sixth Amendment, and the more general right to a fair trial under the Fifth Amendment, are not absolute. Rather, they are exercised in a framework of state law privileges, immunities, and rules of evidence that sometime block access to information needed by the defendant. (See *Chambers* v. *Mississippi* (1973) 410 U.S. 284, 302-303 [35 L.Ed.2d 297, 309, 93 S.Ct. 1038] [a holding that strikes down an unreasonable

hearsay rule on due process grounds does not "signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own ***819** criminal trial rules and procedures"]; *Washington v. Texas* (1967) 388 U.S. 14, 23, fn. 21 [18 L.Ed.2d 1019, 1025, 87 S.Ct. 1920] [a ruling that strikes down on compulsory process grounds a state law prohibiting coconspirators from testifying on each other's behalf does not invalidate traditional testimonial privileges].) While consistency has not been a hallmark in this area, courts have been extremely reluctant to make incursions into state law testimonial privileges - e.g., the attorney/client, priest/penitent, or marital communications privileges - on Sixth Amendment grounds. (See Note, *Defendant v. Witness: Measuring Confrontation and Compulsory Process Rights Against Statutory Communications Privileges* (1978) 30 Stan.L.Rev. 935 (hereafter *Defendant v. Witness*).)

Recognizing the peaceful coexistence between the Sixth Amendment and traditional testimonial privileges, courts have tended to employ a functional, pragmatic approach in reconciling fair trial rights with the less traditional state law privileges, such as the reporter's privilege. [FN2]Such a functional approach was typified by the New Jersey Supreme Court in *State v. Boiardo* (1980) 82 N.J. 446 [414 A.2d 14]. As the court reasoned, the Sixth Amendment rights of confrontation and compulsory process are necessary to ensure that our adversary system results in "'full disclosure of all the facts and a fair trial, within the framework of the rules of evidence.'" (414 A.2d at p. 19, quoting *United States v. Nixon* (1974) 418 U.S. 683, 709 [41 L.Ed.2d 1039, 1064, 94 S.Ct. 3090].) When full disclosure can be accomplished without interfering with the reporter's privilege, the defendant will be able to receive as fair a trial as the state can ensure, without having to resort to a breach of the reporter's privilege. As Chief Justice Wilentz wrote: "[I]f substantially similar material can be obtained from other sources, both the confidentiality needed by the press and the interests of the defendants are protected." (414 A.2d at p. 21.)

> FN2 The majority's holding in this opinion, of course, does not apply to the traditional testimonial privileges. It may be that those privileges should be accorded more protection than the reporter's immunity, because they are consistent with a fair trial as that concept was understood in 1791, when the Fifth and Sixth Amendments were adopted. It may also be that violation of certain privileges implicate federal constitutional rights of their own, such as the right to counsel or the right to free exercise of religion. A more comprehensive treatment of the conflict between testimonial privileges and fair trial rights awaits further development when these matters are properly before us.

Unlike the majority's approach, the court in *Boiardo* did not attempt to balance the respective importance of the information for the reporter and the defendant. Rather, the New Jersey Supreme Court sought to determine, at the threshold, whether defendant would be deprived of a fair trial if information necessary to his defense was withheld. In that case the defendant sought a copy of a letter that a reporter possessed and the defendant believed would assist him in impeaching a key prosecution witness. The ***820** court concluded that the defendant had not carried his burden of showing that the information was unavailable from an alternative source, and therefore upheld the reporter's privilege.

The requirement of a threshold showing that no alternative source of information is available (hereinafter called the alternative-source rule) can, therefore, reconcile reporter's immunity and defendant's rights so as to give effect to both. Unlike the majority's multifactored approach, the alternative-source rule remains focused on the single decisive question: does the defendant need the information to obtain a fair trial? The alternative-source rule also incorporates a functional approach to the defendant's fair trial rights, based on the recognition that these rights exist within a framework of state law privileges and immunities. What one commentator stated of the communications privilege applies at least equally to the reporter's immunity: "A communications privilege would be of little value if a [criminal] defendant could override it whenever its invocation concealed evidence of *some* probative value. Courts must respect the legislative judgment that in some situations the social policy underlying a privilege should require that litigants be denied access to otherwise admissible evidence. The legislative establishment of a privilege should make the privilege-holder a *disfavored source of information*." (*Defendant v. Witness*, *supra*,30 Stan.L.Rev. at p. 966, italics added.)

It is no surprise that a number of courts, state and federal, have employed an alternative source rule at the threshold when weighing criminal defendants' rights against reporters' statutory or qualified First Amendment privileges. (See *United States v. Burke* (2d Cir. 1983) 700 F.2d 70, 77, fn. 8; *United States v. Cuthbertson* (3d Cir. 1981) 651 F.2d 189, 195-196; *United States v. Hubbard* (D.D.C. 1979) 493 F.Supp. 202, 205;*State* v. *Rinaldo* (1984) 102 Wn.2d 749 [689 P.2d 392, 395-396]; *State v. St. Peter* (1974) 132 Vt. 266 [315 A.2d 254, 256];*Brown* v. *Commonwealth* (1974) 214 Va. 755 [204 S.E.2d 429, 431],cert. den. 419 U.S. 966 [42 L.Ed.2d 182, 95 S.Ct. 229]; *Matter of Farber* (1978) 78 N.J. 259 [394 A.2d 330, 338, 99 A.L.R.3d 1] [interpreting earlier, less comprehensive shield law]; *State v. Boiardo, supra*, 414 A.2d 14, 21 [interpreting recent, more comprehensive shield law]; *Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038, 1046 [248 Cal.Rptr. 635]; *Hammarley* v. *Superior Court* (1979) 89 Cal.App.3d 388, 399 [153 Cal.Rptr. 608].)

II. *Policy Considerations: Ensuring Press Autonomy*

The enforcement of an alternative-source rule is desirable for policy as well as doctrinal reasons. A comprehensive reporter's immunity provision, in addition to protecting confidential or sensitive sources, has the effect of ***821** safeguarding "[t]he autonomy of the press." (*O'Neill v. Oakgrove Constr.* (1988) 71 N.Y.2d 521, 526 [528 N.Y.S.2d 1, 3 [523 N.E.2d 277, 279] [construing a similar state constitutional provision].) As the New York Court of Appeals recognized, press autonomy "would be jeopardized if resort to its resource materials by litigants seeking to utilize the news gathering efforts of journalists for their private purposes were routinely permitted [citations] .... The practical burden on time and resources as well as the consequent diversion of journalistic effort and disruption of news gathering activity, would be particularly inimical to the vigor of a free press." (528 N.Y.S.2d at p. 3.)

The threat to press autonomy is particularly clear in light of the press's unique role in society. As the institution that gathers and disseminates information, journalists often serve as the eyes and ears of the public. (See *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 572-573 [65 L.Ed.2d 973, 986-987, 100 S.Ct. 2814]; *Houchins v. KQED, Inc.* (1978) 438 U.S. 1, 17-18 [57 L.Ed.2d 553, 566-567, 98 S.Ct. 2588] (Stewart, J., conc.).) Because journalists not only gather a great deal of information, but publicly identify themselves as possessing it, they are especially prone to be called upon by litigants seeking to minimize the costs of obtaining needed information. Carte blanche access to the journalist's files would give litigants a free ride on news organizations' information-gathering efforts.

To require a threshold showing of no alternative source would discourage this misuse of the press. Our constitutional system does not ensure the exercise of a criminal defendant's rights in the least costly manner. The alternative-source rule would compel litigants to expend a reasonable amount of effort to obtain the information from nonpress sources. Only when a defendant is unable to obtain the information through these means, or when the cost of obtaining the information is prohibitive, would he be able to pierce the shield of journalistic immunity. Such a rule would maximally preserve press autonomy, as the reporter's constitutional immunity is designed to do, while still recognizing that press autonomy must ultimately give way to the criminal defendant's fair trial rights.

III. *Alternative-source Rule and the Percipient Witness*

I concur, nonetheless, in the court's judgment because I find that the alternative-source rule is inapplicable when the information sought is the reporter's own observations as a percipient witness of a transitory event. The alternative-source rule arose in cases, such as those cited *ante*, in which the information in question had been gathered from documents, interviews, public meetings, and the like. In such cases the content of the information existed in some objective and stable form, capable of independent verification - the documents could be independently inspected, the interviewees ***822** could be contacted, etc. What the defendants in those cases were primarily interested in was not the reporters' perceptions but the content of these independent information sources.

In the case of eyewitnessed transitory events, however, no such independent, stable information source exists. Equally significant is the well-established fact that there are often major discrepancies between different eyewitness accounts of the same event, owing to distortions and biases in both perception and

memory. (See *People* v. *McDonald* (1984) 37 Cal.3d 351, 363-365 [208 Cal.Rptr. 236, 690 P.2d 709, 46 A.L.R.4th 1011], and authorities cited; Note, *Did Your Eyes Deceive You: Expert Psychological Testimony on the Unreliability of Eyewitness Identification* (1977) 29 Stan.L.Rev. 969, 971-989.)Thus, two percipient witnesses of the same event are not in any sense fungible. And unlike the document or the interview, the transitory unrecorded event is not subject to subsequent independent verification.

Accordingly, the reporter as a percipient witness is not an "exception" to the alternative-source rule. Rather, in such situations the rule simply does not apply: in a real sense, two eyewitnesses to the same event are not alternative sources of the same information, but sources of *different* information.

In the present case, defendant was able to show a reasonable possibility that the information would assist in ascertaining the truth. Because the information he seeks from the reporters is their contemporaneous observations of a transitory event, he has met the second threshold by showing that no real alternative source of the information exists. He is therefore entitled to the reporters' testimony.

BROUSSARD, J.,
Concurring.

I.

I agree with the majority opinion's conclusion that the information that defendant sought to elicit from the reporters in this case was "unpublished information" within the meaning of the California reporter's shield provision. (Cal. Const., art. I, § 2, subd. (b).) I cannot join, however, in the opinion's suggestion that it is either necessary or appropriate for the court, in reaching this conclusion, to rely solely on the "plain language" of the constitutional provision, without reference to the background or history of the constitutional provision or to the legislative history of the preceding statutory shield provision on which the constitutional provision was deliberately modeled. ***823**

In *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841 [59 Cal.Rptr. 609, 428 P.2d 593], the defendant relied on an argument virtually identical to that embraced by the majority opinion, asserting that because the constitutional provision at issue in that case was "clear and unambiguous," the court was required to confine itself to the "plain language" of the provision and could not consider the legislative history or judicial interpretation of a related statutory provision. (*Id.* at pp. 846-847.)In *Hickman*, this court - in a unanimous opinion - explicitly rejected the argument (*id.* at pp. 847-851), explaining that "'[i]n the absence of contrary indication in a constitutional amendment, terms used therein must be construed in light of their statutory meaning or interpretation in effect at the time of its adoption.'" (*Id.* at p. 850 [quoting *Michels v. Watson* (1964) 229 Cal.App.2d 404 (40 Cal.Rptr. 464)].) Thus, contrary to the suggestion of the majority opinion, *Hickman* as well as many other, more recent, cases (see, e.g., *City of Sacramento* v. *State of California*, *ante*, 51, 67, fn. 11 [266 Cal.Rptr. 139, 785 P.2d 522]) make it clear that a court, in interpreting an initiative measure, may properly consider the statutory antecedents of the measure for any guidance those statutes may shed on the proper interpretation of the initiative provision.

In light of these authorities, I believe that it is clearly appropriate, in interpreting the constitutional reporter's shield provision, to consider the entire background of the provision, including the legislative history and judicial interpretation of Evidence Code section 1070, the statutory provision on which the constitutional shield provision was based. In my view, both the language and history of the shield provision fully support the conclusion that the provision is not limited to an undefined category of "confidential" information, but rather applies to all "unpublished information."

II.

Although the state constitutional shield provision extends to the information elicited from the reporters in this case, I agree with all of my colleagues that, under the facts of this case, application of the shield provision to afford the reporters a state-granted immunity from contempt would improperly infringe on the defendant's federal constitutional rights. In light of the different approaches to the federal constitutional issue reflected in the majority opinion and Justice Mosk's concurring opinion, however, I thought it appropriate briefly to explain my own views on this point.

The majority opinion and Justice Mosk's concurring opinion are on common ground in concluding that, in a criminal case, a defendant's federal constitutional right to a fair trial is implicated whenever a defendant demonstrates ***824** that there is a reasonable possibility that information that would assist his defense is being withheld by a reporter under the aegis of the shield provision. I, too, agree with that proposition.

The majority opinion and Justice Mosk's concurring opinion diverge, however, with respect to the proper constitutional analysis that follows such a showing by the defendant. Justice Mosk's concurring opinion concludes that once a defendant makes such a showing and demonstrates that no alternative sources for the information are available, the federal Constitution always requires the state shield provision to give way. The majority opinion, by contrast, concludes that when a defendant makes the threshold showing, the federal Constitution calls for a case-by-case weighing of the defendant's relative need for disclosure of the information, on the one hand, against the relative strength of the state's interest in permitting the reporter to withhold the information, on the other.

In general, I agree with the majority's conclusion that, in determining whether the California shield provision may be constitutionally applied in a given case, it is appropriate to weigh a defendant's relative need for the information in the particular case against the relative strength of the state's interest in affording immunity under the circumstances of that case. [FN1] In determining the proper scope of federal constitutional rights in other contexts, numerous cases establish that federal constitutional guaranties are generally not absolute, and may, in appropriate circumstances, accommodate state laws which further a sufficiently compelling or important state interest. (See, e.g., *Chambers v. Mississippi* (1973) 410 U.S. 284, 295 [35 L.Ed.2d 297, 309, 93 S.Ct. 1038] ["Of course, the right to confront ... is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process."]; *Konigsberg v. State Bar* (1961) 366 U.S. 36, 49-51 [6 L.Ed.2d 105, 116-117, 81 S.Ct. 997] ["[W]e reject the view that freedom of speech and association ... as protected by the First and Fourteenth Amendments, are 'absolutes' .... [G]eneral regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved. ..."].) Particularly in view of a state's traditional authority to establish evidentiary privileges ***825** to serve interests external to the adjudicatory process, it is difficult for me to see why the general principle permitting consideration of compelling state interests in the application of federal constitutional safeguards should not apply in this context as well. (Cf., e.g., *United States v. Nixon* (1974) 418 U.S. 683, 711-712 [41 L.Ed.2d 1039, 1066, 94 S.Ct. 3090] ["In this case we must weigh the importance of the general privilege of confidentiality of Presidential communications in performance of the President's responsibilities against the inroads of such a privilege on the fair administration of criminal justice."].)

> FN1 Although in my view it would be wiser at this point to refrain from attempting to set forth an exhaustive list of specific "factors" that must be considered by a court in every case (see maj. opn., *ante*, at p. 813), the "factors" discussed in the majority opinion appear broad enough to permit a court to take into account all relevant considerations in "balancing ... the defendant's and newsperson's respective ... interests." (See maj. opn., *ante*, at p. 809.)

Accordingly, in light of the important role a reporter shield provision may play in furthering a state's compelling interest in fostering and preserving a free and vigilant press, I believe that even if a reporter's "unpublished information" in a particular case may be of some assistance to the defense and there are no available alternative sources of the information, if a court finds that the defendant's need for the information is not particularly great while the state's interest in affording a reporter immunity under the circumstances is compelling, the court could properly conclude that the defendant's federal constitutional right to a fair trial would not require the state shield provision to give way.

As the majority opinion demonstrates, however, on the facts of the present case it is clear that no such overriding, compelling state interest is present. Consequently, I concur fully in the majority opinion's affirmance of the Court of Appeal judgment.

Lucas, J., concurred as to part I only.
The petition of real parties in interest for a rehearing was denied July 11, 1990. ***826**

Cal.
Delaney v. Superior Court
50 Cal.3d 785, 789 P.2d 934, 268 Cal.Rptr. 753, 58 USLW 2670, 17 Media L. Rep. 1817

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FREEDOM NEWSPAPERS, INC., Plaintiff and Appellant,
v.
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM BOARD OF DIRECTORS, Defendant and Respondent.
No. S029178.

Supreme Court of California
Dec 23, 1993.

SUMMARY

A newspaper publisher sought a writ of mandate to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The trial court denied the petition and entered judgment in favor of the board. (Superior Court of Orange County, No. 660703, Greer Stroud, Referee.) The Court of Appeal, Fourth Dist., Div. Three, No. G011490, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that, since the operations committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" pursuant to the provisions of Gov. Code, § 54952.3, and was therefore excluded from the open meeting requirements of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.). (Opinion by Panelli, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring and dissenting opinion by Mosk, J. Separate dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Counties § 1--Open Meeting Requirements--Advisory Committee of County Employees Retirement System Board--Committee Composed of Less Than Quorum of Board:Pensions and Retirement Systems § 3--Administration.
The trial court did not err in denying a petition for a writ of mandate brought by a newspaper publisher that was seeking to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory and was composed of four members of the nine-member board. Gov. Code, § 54952.3, exempts from the definition of "legislative bodies" that are subject to the open meeting requirements of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.) advisory committees composed of less than a quorum of the governing body. Although Gov. Code, § 54952.3, could be read to mean that less-than-quorum committees are merely exempt from the formal requirements of that specific statute, the legislative history of the act, including the Legislature's response to court decisions, demonstrates an intent to exempt less-than-quorum advisory committees from all open meeting requirements. Since the committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" and was therefore excluded from the open meeting requirements of the act.
[Validity, construction, and application of statutes making public proceedings open to the public, note, 38 **A.L.R.3d** 1070. See also 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 579.]
(2) State of California § 10--Attorney General--Opinions.
While the opinions of the Attorney General are not binding on the courts, they are entitled to great weight.

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Denise Eaton-May and Ted Prim, Deputy Attorneys General, ***823** Hatch & Parent, Peter N. Brown and Kelly G. McIntyre as Amici Curiae on behalf of Defendant and Respondent.

PANELLI, J.

The Ralph M. Brown Act (Stats. 1953, ch. 1588, § 1, p. 3269, codified as Gov. Code, § 54950 et seq. [hereafter the Brown Act or the Act]) [FN1] provides that all meetings of "the legislative body of a local agency shall be open and public," except as otherwise provided in the Act. (§ 54953.) At all times relevant to this case the Act contained four separate definitions of "legislative body." [FN2]We granted review to determine whether the Operations Committee of the Retirement Board of Orange County Employees Retirement System (hereafter Board) is a "legislative body" within the meaning of the Brown Act and, therefore, subject to the Act's ***824** open meeting requirements. Because the Operations Committee is an advisory committee composed solely of Board members numbering less than a quorum of the Board, we hold that the committee is not a "legislative body" pursuant to the provisions of section 54952.3 and is thereby excluded from the open meeting requirements of the Act.

FN1 All statutory references are to the Government Code unless otherwise noted.

A new law changing the relevant provisions of the Government Code was enacted while this case was pending. (Sen. Bill No. 1140 (1993-1994 Reg. Sess.), Stats. 1993, ch. 1138, eff. Apr. 1, 1994.) The impact of the new law is addressed in footnote 11, *post*. Except in that footnote, all references to the Government Code in this opinion are to the current version, i.e., the law as it will be until Senate Bill No. 1140 takes effect on April 1, 1994.

FN2 Section 54952: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation."

Section 54952.2: "As used in this chapter, 'legislative body' also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Section 54952.3: "As used in this chapter[,] 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. [¶] Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. [¶] If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required. [¶] 'Legislative body' as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body. [¶] The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section."

Section 54952.5: "As used in this chapter[,] 'legislative body' also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency."

I. Facts

The Orange County Employees Retirement System is governed by a nine-member Board. Five members of the Board constitute a quorum. The Board is a "local agency" and a "legislative body" under sections 54951 and 54952 respectively. The Board is therefore subject to the open meeting requirements of the Brown Act. The chairman of the Board has created five advisory [FN3] committees-operations, benefit, investment, real estate, and liaison-each composed of four members of the Board. Some members serve on more than one committee. The committees' function is to review various matters related to the business of the Board and to make recommendations to the full Board for action. The Board considers the committees' recommendations in public meetings, at which time there is an opportunity for full public discussion and debate. The committees do not have any decisionmaking authority and act only in an "advisory" capacity. [FN4]

FN3 The parties do not dispute that these committees are properly described as "advisory."

FN4 The only evidence concerning the composition and function of the committees is a declaration by the administrator of the retirement system. The declaration states:

"[¶] 4.... All of the committees of the Board of Retirement, including the Operations Committee, are comprised solely of members of the Board of Retirement. The Board of Retirement has nine members, and a quorum is five. However, none of the committees of the Board of Retirement are comprised of more than four members, and all committee members are also members of the Board of Retirement.... [¶] 5. The function of such committees is to review various matters related to the business of the Board of Retirement, and make recommendations to the full Board for action. The committees have not been delegated any decision-making authority. The committees act in an advisory capacity, and make recommendations to the full Board of Retirement. The full Board considers those recommendations in public meetings, at which time there is an opportunity for full public discussion and debate on those recommendations. [¶] 6. The committees are formed by the Chairman of the Board of Retirement. The Chairman determines what committees shall operate, and which members of the Board of Retirement shall serve on such committees. The Chairman has the authority to form new committees, abolish existing committees, or combine existing committees. There is no Board rule or regulation which prescribes the number of Board committees, or the duties of any such committee; it is up to the Chairman of the Board of Retirement to decide what committees shall be formed, and who will serve on them."

On June 18, 1991, the Operations Committee met to formulate a list of recommended changes to the Board's travel policy. Freedom Newspapers sought to attend the meeting but the committee denied permission on the ground that it was not subject to the open meeting requirements of the ***825** Brown Act. The next day, June 19, the full Board met in a public session at which the chairman of the Operations Committee read and explained the committee's recommendations. The press was in attendance, and there was public discussion among the Board's members about the recommendations. The Board ultimately voted eight to one in public session to accept the recommendations.

On the same day, Freedom Newspapers petitioned the trial court for a writ of mandate alleging that the Operations Committee is subject to the open meeting requirements of the Brown Act. The trial court denied the petition and entered judgment in favor of the Board. Freedom Newspapers appealed from that judgment, and the Court of Appeal reversed. We granted the Board's petition for review.

II. Discussion

The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. (§ 54950.) [FN5]5 The Act provides that "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." (§ 54953.) As already noted, "legislative body" is defined in four sections of the Act, two of which pertain

to the case before us. (§§ 54952, 54952.3.)Section 54952 provides that any committee or body on which officers of a local agency serve in their official capacity and which is supported by its appointing local agency is a "legislative body." (§ 54952.) [FN6]6Section 54952.3 more specifically addresses "advisory" bodies: "As used in this chapter[,] 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. [¶] ... [¶] *'Legislative body' as defined in this section does not include a committee composed solely of members of the governing body of* ****826** a local agency which are less than aquorum of such governing body*." (§ 54952.3, [FN7]7 italics added.)

> FN5 Section 54950 provides: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

> FN6 For the full text of section 54952, see *ante*, footnote 2.

> FN7 For the full text of section 54952.3, see *ante*, footnote 2.

(1a) The parties in this case disagree over the meaning of the explicit less-than-a-quorum exception contained in section 54952.3. The Board and its amici curiae, including the Attorney General, argue that an advisory committee that is excluded from the definition of "legislative body" under the exception is completely exempt from the open meeting requirements of the Act. [FN8]

> FN8 Like the Brown Act, the 1972 Federal Advisory Committee Act generally subjects advisory committees to open meeting requirements. (86 Stat. 770, as amended, 5 U.S.C.S. Appen. §§ 1-15.) However, the same act, as amended, also specifically exempts "any [advisory] committee which is composed wholly of full-time officers or employees of the Federal Government" from the open meeting requirements. (5 U.S.C.S. Appen. § 3(2)(C)(iii).)

In opposition, Freedom Newspapers and its amici curiae contend that the less-than-a-quorum exception in section 54952.3 merely exempts less-than-a-quorum committees from the special, relaxed procedural requirements of section 54952.3. According to Freedom, such committees remain subject to the stricter open meeting requirements that are generally applicable to "legislative bodies" under section 54952.

When interpreting a statute our primary task is to determine the Legislature's intent. (*Brown v. KellyBroadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

Each party asserts that the language of section 54952.3 supports its view. Freedom reasons that, had the Legislature intended to exempt less-than-a-quorum advisory committees from the Act's open meeting requirements, it would have used language such as this: " 'legislative bodies' as defined in *this chapter* shall not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body." Because the Legislature used the words "in this section," instead of "in this chapter," the effect of the less-than-a-quorum exception, according to Freedom, is simply to exclude less-than-a-quorum committees from the terms of section 54952.3 rather than from other definitions of "legislative body" within the Act.

In contrast, the Board argues that, because section 54952.3 specifically refers to "any ... advisory committee," that section alone governs advisory ***827** committees for the purposes of the Act. To support its interpretation the Board relies, in part, on the tradi-

tional rules of statutory construction that specific statutes govern general statutes (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 [7 Cal.Rptr.2d 245, 828 P.2d 147]; see also *Yoffie v. Marin Hospital Dist.* (1987) 193 Cal.App.3d 743, 750-753 [238 Cal.Rptr. 502]; *Kennedy v. City of Ukiah* (1977) 69 Cal.App.3d 545, 552 [138 Cal.Rptr. 207]) and that, to the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443 [261 Cal.Rptr. 574, 777 P.2d 610]; *Yoffie v. Marin Hospital Dist., supra*, 193 Cal.App.3d at p. 751). According to the Board, an advisory committee that is excluded from the definition of "legislative body" contained in section 54952.3 is not subject to the Act's open meeting requirements, even if it might otherwise satisfy the more general definition of "legislative body" contained in section 54952.

The Board also argues that Freedom's interpretation of section 54952 would deprive sections 54952.2 and 54952.5, as well as the less-than-a-quorum exception in 54952.3, of meaning. To explain, sections 54952.2 and 54952.5 purport to include only certain bodies within the definition of "legislative body." For the Legislature to have enacted those statutes would have made no sense if the governmental bodies described therein had already been included in the more general definition of "legislative body" contained in section 54952.

To be sure, one could argue that section 54952.3 might still have some meaning under Freedom's interpretation. Because section 54952.3 gives certain advisory bodies the benefit of procedural requirements that are less stringent than the requirements applicable to "legislative bodies" under section 54952, under Freedom's interpretation the exception contained in section 54952.3 for less-than-a-quorum advisory committees would have the effect of subjecting such committees to the stricter, generally applicable procedural requirements.

But Freedom's interpretation of section 54952.3 would also result in absurdity. If we construed section 54952.3 merely as exempting less-than-a-quorum advisory committees from the less rigid procedural requirements in that section, even a temporary, ad hoc advisory committee composed solely of less than a quorum of the governing body would be subject to all of the Brown Act's generally applicable procedural requirements, including the requirement that committees hold "regular" meetings. (§ 54954.) Yet a ***828** temporary, ad hoc committee, by definition, does not hold "regular" meetings. We will not give a statute an absurd interpretation. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]; *Gage v. Jordan* (1944) 23 Cal.2d 794, 800 [147 P.2d 387]; *Lynch v. State Bd. of Equalization* (1985) 164 Cal.App.3d 94, 114 [210 Cal.Rptr. 335].)

Freedom attempts to avoid the absurdity by characterizing the Operations Committee as a standing committee. However, neither section 54952 nor section 54952.3 distinguishes between ad hoc advisory committees and standing advisory committees. We will not add to a statute a distinction that has been omitted. (Code Civ. Proc., § 1858; see, e.g., *Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 [275 Cal.Rptr. 201, 800 P.2d 557].)

When a statute is ambiguous, as in this case, we typically consider evidence of the Legislature's intent beyond the words of the statute (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323]) and look both to the legislative history of the statute and to the wider historical circumstances of its enactment (*ibid.*). An examination of the history of the Brown Act, both prior to and after the enactment of section 54952.3, shows that committees comprised of less than a quorum of the legislative body have generally been considered exempt from the Act's open meeting requirements.

In 1958 the Attorney General, interpreting the original version of section 54952, [FN9] concluded that "meetings of committees of local agencies where such committees consist of less than a quorum of the legislative body are not covered by the act." (*Secret Meeting Law*, 32 Ops.Cal.Atty.Gen. 240, 242 (1958).) The Attorney General reasoned that, "[i]n those cases the findings of such a committee have not been deliberated upon by a quorum of the legislative body and the necessity, as well as the opportunity, for full public deliberation by the legislative body still remains." (*Ibid.*)

FN9 In 1958 section 54952 provided: "As

> used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof." (Stats. 1953, ch. 1588, § 1, p. 3270.)

Successive Attorneys General have consistently adhered to the view stated in the 1958 opinion. In 1968 the Attorney General wrote that "[w]e have consistently concluded that committees composed of less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of ***829** that Act. In view of the lack of any pronouncements on the parts of either the courts or the Legislature which would compel a different conclusion, our opinion remains unchanged." (Cal. Atty. Gen., Indexed Letter No. IL 68-106 (Apr. 29, 1968).)

More specifically, since the enactment of section 54952.3 the Attorney General has continuously recognized that advisory committees falling within the express less-than-a-quorum exception in section 54952.3 are not "legislative bodies" within the meaning of the Brown Act. (See, e.g., Cal. Atty. Gen., Indexed Letter No. IL 69-131 (June 30, 1969); Secret Meetings Laws Applicable to Public Agencies (Cal.Atty.Gen., 1972) pp. 6-8; *Closed Meetings*, 63 Ops.Cal.Atty.Gen. 820, 823 (1980); *Open Meeting Requirements*, 64 Ops.Cal.Atty.Gen. 856, 857 (1981).) The Attorney General's brief in this case supports the long-standing view of his office. (2) While the Attorney General's views do not bind us (*Unger v. Superior Court* (1980) 102 Cal.App.3d 681, 688 [162 Cal.Rptr. 611]), they are entitled to considerable weight (*Meyer v. Board of Trustees* (1961) 195 Cal.App.2d 420, 431 [15 Cal.Rptr. 717]). (1b) This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements. (See, e.g., Open Meeting Laws (Cal.Atty.Gen., 1989).)

In 1961 the Legislature amended the Brown Act, not in response to the Attorney General's recognition of an implicit less-than-a-quorum exception, but in response to a judicial opinion that essentially eviscerated the Act by restrictively defining the terms "meeting" and "legislative body." The court in *Adler v. City Council* (1960) 184 Cal.App.2d 763 [7 Cal.Rptr. 805] (*Adler*) held that a city's planning commission did not violate the Brown Act when all but one of its members attended a dinner given a few days before the host's application to the commission for an amendment to the zoning law. The court held that "the Brown Act was not directed at anything less than a formal meeting of a city council or one of the city's subordinate agencies." (*Id.* at p. 770.)Misconstruing the Attorney General's 1958 opinion (*Secret Meeting Law*, *supra*, 32 Ops.Cal.Atty.Gen. 240), which addressed committees composed of less than a quorum of the governing body, the court also held that the Act did not apply to any committee of an advisory nature, whether or not composed of a quorum of the governing body. (*Adler*, *supra*, 184 Cal.App.2d at p. 771.)

In response to the *Adler* decision, the Legislature broadened the scope of the Brown Act the very next year. (Stats. 1961, ch. 1671, § 1, p. 3637, ***830** amending §§ 54952 and 54957, and adding §§ 54952.5, 54952.6, and 54960.) Shortly after the 1961 amendments took effect, the Attorney General construed them as disapproving *Adler* on several points. (*Secret Meeting Law*, 42 Ops.Cal.Atty.Gen. 61 (1963).) Specifically, the Attorney General concluded that the 1961 amendments "disapproved *Adler's* restrictive interpretation of the word 'meeting' by recognizing that criminally prohibited legislative action may be taken at gatherings that fall far short of the ' " formal assemblages of the council sitting as a joint deliberative body " ' " and "repudiated that portion of the *Adler* decision which held that the act was not meant to apply to planning commissions or other bodies of an 'advisory' nature." (*Secret Meeting Law*, *supra*, 42 Ops.Cal.Atty.Gen., at pp. 64-65.)

In addition to the history set out above, the history of the Brown Act in the Legislature reflects a recognition of the implicit less-than-a-quorum exception and, after the consistent failure of proposals to abolish it, the codification of a limited version of that exception.

A 1963 bill would have abolished the exception by providing that "[a]ll meetings of any committee or subcommittee of a legislative body, *whether or not composedof a quorum of the members of the legislative body*, shall be open and public, and all persons shall be permitted to attend any meeting of such committee or subcommittee, except during consider-

ation of the matters set forth in Section 54957." (Assem. Bill No. 2334 (1963 Reg. Sess.) § 2, italics added.) The bill did not pass.

The legislative history of section 54952.3, the provision at issue in this case, reveals another unsuccessful attempt to abolish the implicit less-than-a-quorum exception. Section 54952.3, enacted in 1968 (Stats. 1968, ch. 1297, § 1, p. 2444), extended the coverage of the Brown Act to certain advisory committees that were not previously covered. However, at the same time the Legislature rejected an alternative bill that would have abolished the implicit less-than-a-quorum exception by making all advisory committees subject to the full procedural requirements applicable to governing bodies. (Sen. Bill No. 717 (1968 Reg. Sess.).) [FN10] The bill that did pass (Assem. Bill No. 202 (1968 Reg. Sess.), codified as § 54952.3) thus appears to be a compromise, incorporating into the open meeting requirements of the Brown ***831** Act advisory committees that were not previously included within the Act, but relaxing the procedural requirements applicable to those committees and codifying a limited version of the implicit less-than-a-quorum exception.

> FN10 Senate Bill No. 717 would have amended section 54952 by adding the italicized words: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board, commission, *committee, advisory committee, or subcommittee* thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation." (Sen. Bill No. 717 (1968 Reg. Sess.), italics in original.)

To support its view that the committees excluded from the definition of "legislative body" in section 54952.3 were included in another definition of "legislative body," Freedom Newspapers relies on a communication by Assemblyman Hayes to the members of the Assembly discussing his reasons for drafting the less-than-a-quorum exception. Assemblyman Hayes claimed that " '[t]he reason [for enacting the less-than-a-quorum exception in section 54952.3] was that such committees of the governing body of a local agency are covered by another section of the Ralph M. Brown Act, Government Code Sec. 54952.' " (4 Assem. J. (1968 Reg. Sess.) p. 7163.) However, these comments offer little assistance in the interpretation of section 54952.3 because they do not necessarily reflect the views of other members of the assembly who voted for section 54952.3. (Cf. *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 801, fn. 12 [268 Cal.Rptr. 753, 789 P.2d 934]; see also *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 700-701 [170 Cal.Rptr. 817, 621 P.2d 856]; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589-590 [128 Cal.Rptr. 427, 546 P.2d 1371].)

Indeed, the Legislature's action in two respects since the 1968 enactment of section 54952.3 indicates its continuing understanding that advisory committees comprised solely of less than a quorum of the governing body are exempt from the open meeting requirements of the Act.

First, although legislative acquiescence is a weak indication of legislative intent (*People v. Escobar* (1992) 3 Cal.4th 740, 751 [12 Cal.Rptr.2d 586, 837 P.2d 1100]), we note that the Legislature has allowed the Court of Appeal's opinion in *Henderson v. Board of Education* (1978) 78 Cal.App.3d 875 [144 Cal.Rptr. 568] to govern meetings of less-than-a-quorum advisory committees for the past 14 years.

The *Henderson* court squarely addressed the issue of whether an advisory committee consisting solely of governing board members, constituting less than a quorum of the board, was exempt from the open meeting requirements of the Act. (78 Cal.App.3d at pp. 880-883.) In *Henderson*, ad hoc advisory committees had been created for the purpose of advising the board of education about the qualifications of candidates for appointment to a vacant position. Each of the advisory committees was composed solely of members ***832** of the governing body of the school district numbering less than a quorum of the governing body. The court considered whether the advisory committees had violated the Brown Act when they evaluated the candidates' qualifications and interviewed candidates in private sessions. (*Id.* at p. 877.)Finding that section 54952.3 provided an express

exemption from the open meeting requirements of the Brown Act for advisory committees comprised solely of less than a quorum of the governing body, the *Henderson* court held that the advisory committees in that case were not subject to the Act. (78 Cal.App.3d at pp. 880-881.)

Secondly, and more importantly, the Legislature in 1992 attempted to extend the coverage of the Brown Act by limiting the coverage of the express less-than-a-quorum exception in section 54952.3 to ad hoc advisory committees. This legislation is the strongest indication that the current version of section 54952.3 excludes less-than-a-quorum advisory committees from the Act's open meeting requirements, rather than merely from the less-stringent procedural requirements in section 54952.3. On August 31, 1992, the California Legislature passed and sent to the Governor a bill amending the explicit less-than-a-quorum exception as follows: " 'Legislative body' as defined in this section does not include a *limited duration ad hoc committee* composed solely of members of the governing body of a local agency which are less than a quorum of the governing body *but does include any standing committee* of a governing body irrespective of its composition. For purposes of this section, 'standing committee' means a permanent body created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency and which holds regularly scheduled meetings." (Assem. Bill. No. 3476 (1991-92 Reg. Sess.) § 3, italics added.) The Governor vetoed this bill, reasoning that its economic impact would be too great in view of the state's fiscal outlook. In his veto message the Governor stated: "This bill would make a number of changes in the Ralph M. Brown Act relating to open meetings. It would *expand the number of local agencies subject to the law*, and expand notice, recordation, and recordkeeping requirements.... [¶] I cannot approve mandating expensive new requirements while we are unable to afford the ones on the books today." (Governor's veto message to Assem. on Assem. Bill No. 3476 (Sept. 20, 1992) Recess J. No. 24 (1991-1992 Reg. Sess.) p. 10271, italics added.) FN11

FN11 On October 10, 1993, the Governor signed into law Senate Bill No. 1140 (Stats. 1993, ch. 1138), which changes, as of April 1, 1994, the Brown Act's definition of "legislative body." Among other things, the new law amends section 54952 and repeals sections 54952.2, 54952.3, and 54952.5.

The newly amended section 54952 codifies an exception for less-than-a-quorum advisory committees in these words: "[A]dvisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter." (§ 54952, subd. (b), as amended by Sen. Bill No. 1140 (1993-1994 Reg. Sess.), 1993 Stats., ch. 1138, eff. Apr. 1, 1994.)

This case does not present the issue whether the Operations Committee would be a "legislative body" under the new law. Accordingly, we express no opinion on the issue.

The Legislature's adoption of subsequent, amending legislation that is ultimately vetoed may be considered as evidence of the Legislature's understanding of the unamended, existing statute. (See ***833***Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289]; see also *Irvine v. California Emp. Com.* (1946) 27 Cal.2d 570, 578 [165 P.2d 908].) The 1992 legislation reflects the Legislature's understanding that the current version of the explicit less-than-a-quorum exception in section 54952.3 excludes advisory committees, whether ad hoc or standing, composed solely of less than a quorum of the members of the governing body from the open meeting requirements of the Act.

The 1992 legislation "would [have] exclude[d] a limited duration ad hoc committee from the definition of legislative body but would [have] include[d] any standing committee, as defined, of a governing body irrespective of its composition." (See Legis. Counsel's Dig., Assem. Bill No. 3476 (1991-1992 Reg. Sess.).) Because the 1992 legislation retained the "in this section" language (§ 54952.3) and made no amendment to the general language in section 54952, the legislation would only make sense if the Legislature

gave the words "in this section" the same meaning that the Board attributes to them in the current statute. If the Legislature had intended "in this section" to be interpreted as narrowly as Freedom suggests, the 1992 legislation would have had this bizarre result: Limited duration, ad hoc, advisory committees would have been subject to the full set of procedural requirements applicable to governing bodies, including the requirement of holding "regular meetings," but standing advisory committees would have received the benefit of the relaxed procedural requirements described in section 54952.3. This clearly could not have been the intended effect of the 1992 bill.

In view of these considerations, we find it more consistent with the legislative intent to construe the less-than-a-quorum exception contained in section 54952.3 as an exception to the definition of "legislative body," and thus one of several exceptions to the Brown Act's open meeting requirements, [FN12] rather than merely as an exception to the special procedural requirements of section 54952.3. This interpretation is consistent with the Act's ***834** purpose of ensuring that the "actions [of public agencies] be taken openly and that their deliberations be conducted openly." (§ 54950.)By definition, the exception applies only to an advisory committee that consists solely of members of the legislative body that created it but not enough members to constitute a quorum or, thus, to act as the legislative body. Accordingly, before any action can be taken on such a committee's recommendations the entire legislative body, which includes the members of the advisory committee, must conduct further, public deliberations. (§ 54952.)In this way the Act reasonably accommodates the practical needs of governmental organizations while still protecting the public's right to know.

> FN12 Compare section 54956.9 (legislative body may hold closed sessions to confer with legal counsel regarding pending litigation); section 54957 (legislative body may hold closed sessions to confer with Attorney General, district attorney, sheriff, chief of police, or their respective deputies, on matters posing a threat to the security of public buildings); section 54957.6 (legislative body may hold closed sessions to discuss matters related to employee compensation and collective bargaining).

III. Disposition

Since the Operations Committee is composed solely of members of the governing body of a local agency numbering less than a quorum of the governing body, the committee's meeting on June 18, 1991, was not subject to the open meeting requirements of the Brown Act. Accordingly, the judgment of the Court of Appeal is reversed.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred.

MOSK, J.,
Concurring and Dissenting.-Although I have no quarrel with the result reached by the majority, I find that virtually all their reasoning has been rendered moot by the enactment of the 1993 legislation quoted in footnote 11 of the majority opinion. (Stats. 1993, ch. 1138.)

That legislation answers the question we took this case to resolve, i.e., whether advisory committees composed solely of members of a legislative body are themselves "legislative bodies" for purposes of the Ralph M. Brown Act. (Gov. Code, § 54950 et seq.) The 1993 legislation plainly declares they are not, unless they qualify as "standing committees" therein defined.

In light of this development the majority opinion has become an anachronism; indeed, the 1993 legislation repeals the very statute discussed by the majority at length. (Gov. Code, § 54952.3.)Because it is not our responsibility to offer advisory opinions on repealed statutes, I would dismiss review in this case as improvidently granted. ***835**

KENNARD, J.
I dissent.

California's Open Meeting Law [FN1] requires legislative bodies to give notice of the time and place of their meetings and to make such meetings open and accessible to the public. The stated purpose of this law is to assure that Californians can be fully informed about the legislative decisionmaking process of elected and appointed officials. Under the majority opinion, however, a legislative body is entirely free to conduct the public's business in private session, shielding its

decisionmaking process from scrutiny by the press or public, simply by dividing itself into various "standing committees" whose membership does not comprise a quorum of the full legislative body. [FN2] The majority reaches this result by interpreting the Brown Act to exempt such committees from compliance with *any* of the Act's requirements. The majority's interpretation contorts the statutory language and contravenes the goal of this state's Open Meeting Law.

FN1 This law, which is codified in Government Code section 54950 et seq., is also known as the Ralph M. Brown Act, and will hereafter be referred to alternatively as the "Brown Act" or the "Act."

FN2 Of course, in the case of a "committee" whose members make up a quorum or more-than-a-quorum of the membership of the full governing body, the committee would not be a "committee" at all; it would be *the* governing body.

I

This case arose out of the June 18, 1991, meeting of the "Operations Committee" of the Board of Directors of the Orange County Employees Retirement System. The Board administers $1.5 billion, consisting of moneys derived from the county's general fund as well as those contributed by employees. The "Operations Committee" is one of five standing committees that report to the full Board. The membership of the Operations Committee (and of each of the other standing committees) consists of four of the nine Board members-one person less than a quorum of the Board.

The purpose of the June 18, 1991, meeting was to reevaluate the Board's travel policy-a policy that had engendered substantial controversy after it was reported that some Board members had used public funds to tour Europe, assertedly in connection with Board investments. A reporter for the Orange County Register, a daily newspaper, tried to attend the meeting but was refused entry.

The next day, the newspaper's parent company, Freedom Newspapers, Inc., petitioned the superior court for a writ of mandate, seeking access to future meetings of the Operations Committee. The superior court denied the ***836** petition. The Court of Appeal reversed, however, concluding that the Operations Committee was a "legislative body of a local agency" whose meetings were consequently required by the Brown Act to be "open and public." (Gov. Code, § 54953.) [FN3]

FN3 Further undesignated statutory references are to the Government Code.

This court granted the Board's petition for review and now reverses the judgment of the Court of Appeal.

As I shall explain, the Court of Appeal reached the correct result.

II

In the preamble to the Brown Act, the Legislature expressed the intent underlying the Act: "[T]he Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (§ 54950.)

Consistent with this stated legislative intent, the Act requires that all meetings of legislative bodies of local agencies "be open and public" and that all persons "be permitted to attend" such meetings. (§ 54953.)The Act does, however, permit legislative bodies to discuss in "closed session" certain sensitive topics, such as pending litigation and personnel matters. [FN4]

FN4 The Act permits closed session meetings when an agency discusses a license application by someone with a criminal record (§ 54956.7), or meets with its negotiator regarding the price and terms acceptable to the agency in a real property transaction (§ 54956.8), or discusses pending litigation with legal counsel (§ 54956.9), or participates in a joint agency meeting about insur-

> ance pooling, tort liability losses, or workers' compensation liability (§ 54956.95), or discusses employee wages and benefits with its labor negotiator (§ 54957.6), or participates in meetings regarding multijurisdictional drug law enforcement (§ 54957.8).

The Act also requires "legislative bodies" to conduct "regular" meetings (§ 54954) and abide by certain rules pertaining to adjournment or continuance of such meetings (§§ 54955, 54955.1). Additional requirements are posting the agenda of each regular meeting, acting only on items listed on the posted agenda (§ 54954.2), and giving written notice one week before ***837** each regular meeting to anyone requesting such notice (§ 54954.1). The Act does allow for special meetings, but only if they are preceded by a 24-hour written notice. (§ 54956.)

The Act defines "legislative bodies" broadly. The term includes "the governing board, commission, directors or body of a local agency, or any board or commission thereof" as well as "any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency ...." (§ 54952.)The term also applies to "any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency" (§ 54952.2), as well as to "planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency" (§ 54952.5).

The "Operations Committee" of the Board of Directors of the Orange County Employees Retirement System, as a "committee ... on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency," qualifies as a "legislative body" within the meaning of section 54952, thus making it subject to the Brown Act's "open meeting" requirements. The issue in this case is whether the Operations Committee is exempted by another, more specific, provision of the Act, section 54952.3, from holding meetings open to the public.

Section 54952.3 provides for less stringent notice requirements for meetings of "any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency." Under this section, an advisory commission, committee or body is a "legislative body" for purposes of the *open meeting* requirements of the Act. Such a legislative body can, however, elect between giving 24-hour written notice of its meetings or providing by rule or bylaw for its meetings to be held at a regular time; "[n]o other notice of regular meetings is required." (§ 54952.3.)

Section 54952.3 further provides that a " '[l]egislative body' as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are *less than a quorum* of such governing body." (Italics added.) It is on this italicized phrase that the majority rests its conclusion that advisory committees made up only of members of the full governing body but "less than a quorum" of that body ***838** are exempt from any of the requirements of the Brown Act. Thus, under the majority's interpretation, the Operations Committee was free to conduct its business in private.

I disagree with the majority's interpretation of section 54952.3's "less-than-a-quorum" provision. In my view, this provision by its express terms excludes those advisory committees composed solely of members of the full governing body of the local agency only from the "relaxed" notice requirements of section 54952.3, thereby making such advisory bodies subject to the more rigid requirements that govern legislative bodies generally.

My interpretation of the "less-than-a-quorum" provision is compelled by the plain language of section 54952.3, which must be the starting point for this statutory interpretation. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823 P.2d 1216].) After specifying that advisory commissions or committees are "legislative bodies" for purposes of the Brown Act, section 54952.3 next describes the less stringent procedural requirements for the meetings of such advisory bodies. It then states that " '[l]egislative body' *as defined in this section* does not include a committee composed solely of members of the governing body of the local agency which are less than of quorum of such governing body." By the limiting language, "as defined in this section," the provision carves out an exception from section 54952.3's definition of "legislative body" (and thus from the sec-

tion's less stringent notice requirements) for an advisory committee composed solely of members of the governing body of the local agency who comprise less than a quorum of the local agency's full membership.

Therefore, in this case the Operations Committee of the Board of Directors of the Orange County Employees Retirement System, as an advisory committee composed solely of members of the full governing body of the local agency (the Board), is not a "legislative body" for purposes of the relaxed notice requirements of section 54952.3. Rather, as I explained earlier, the Operations Committee meets section 54952's definition of "legislative body" as being a "committee ... on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency ...." As such, the Operations Committee is subject to the full force of the Brown Act. Most important, the committee must conduct its business in public.

To require an advisory committee that, as here, is comprised of individuals who are members of the governing body to which the committee reports to conduct public meetings would further the Legislature's stated intent that ***839** "the people's business" be conducted openly, and that both the "actions" and the "deliberations" of government be open to the press and public. Even though the Operations Committee cannot itself bind the full Board by "actions" such as adopting a proposal or enacting a rule (which would require a majority vote of the full Board), it can and does "deliberate." "Deliberation" is defined as "the process ... of thoughtful and lengthy consideration" or as "formal discussion and debate on all sides of an issue." (American Heritage Dict. of the English Language (1980) p. 349.) Indeed, to best assure that government decisions follow thoughtful and lengthy consideration or debate of all sides of an issue, the Brown Act invites the public to witness that whole process.

A standing committee's reconsideration of a significant policy that affects the public's trust and confidence in its government officials-such as the Board's travel policy here-necessarily involves deliberation. Yet, under the majority's interpretation of section 54952.3, this deliberation can take place in private session outside the scrutiny of the public. And when, as in this case, the makeup of the standing committee recommending a policy change is just one member short of a quorum of the full governing body, and only one additional vote is needed to make the recommended change, there may be little further debate or deliberation on the issue by the full Board. In that event, the public is deprived of its right to witness the deliberative processes of government. Indeed, under the majority's reading of section 54952.3, any local agency wishing to keep its deliberative processes from the public can effectively do so by referring controversial issues to standing committees comprised of one member less than a quorum.

The majority's interpretation of section 54952.3 rests first on its conclusion that construing section 54952.3 to exempt from the less stringent procedural requirements specified by that section *all* less-than-a-quorum advisory committees composed solely of members of the governing body would "result in absurdity" by making even temporary, ad hoc advisory committees subject to the Brown Act's "generally applicable procedural requirements," including that set out in section 54954 of holding "regular" meetings. (Maj. opn., *ante*, at p. 827.) But to require a temporary, ad hoc advisory committee to conduct its meetings at a regular time seems far less absurd than to permit, as the majority does here, a local agency to use standing committees to shield discussion and deliberation on controversial issues from public scrutiny. [FN5]

> FN5 Fortunately, the majority's opinion, though misguided, will be short-lived. New legislation (Stats. 1993, ch. 1138), which changes the Brown Act's definition of "legislative body" effective April 1, 1994, draws a distinction between "ad hoc" and "standing" advisory committees, and specifies that the latter, to the extent they "have a continuing subject matter jurisdiction," are covered by the Brown Act's "open meeting" requirements. (§ 54942, subd. (b), as amended by Sen. Bill No. 1140 (1993-1994 Reg. Sess.), Stats. 1993, ch. 1138, § 3, eff. Apr. 1, 1994.)

The majority relies also on opinions by the Attorney General (which the majority admits do not bind this court) and on a series of failed legislative ***840** efforts to amend the Brown Act. But we need not turn to unpassed or vetoed legislation to discern the Legislature's intent. The Legislature has made its intent plain

in the preamble to the Brown Act, which expressly states that to ensure that Californians can remain informed and "retain control" over their own government, legislative deliberations must be conducted openly. "Vital" to the functioning of any democratic society is "an informed citizenry." (*John Doe Agency v. John Doe Corp.* (1989) 493 U.S. 146, 152 [107 L.Ed.2d 462, 110 S.Ct. 471].) Consistent with our Legislature's intent, I would affirm the Court of Appeal's judgment directing that the Board allow members of the press and the public to attend "its regular committee meetings," including those of its Operations Committee. ***841**

Cal. 1993.
Freedom Newspapers, Inc. v. Orange County Employees Retirement System
6 Cal.4th 821, 863 P.2d 218, 25 Cal.Rptr.2d 148

END OF DOCUMENT

Effective: January 1, 2011

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions (Refs & Annos)
Part 10.5. School Facilities (Refs & Annos)
Chapter 6. Development Fees, Charges, and Dedications (Refs & Annos)

➡ § 17620. Levies against development projects by school districts

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

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

(B) To new residential construction.

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

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

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

(2) For purposes of this section, "construction" and "assessable space" have the same meanings as defined in Section 65995 of the Government Code.

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

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

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration

collected pursuant to this section is not prohibited.

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

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

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, or the Office of Statewide Health Planning and Development shall not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, shall not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

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

CREDIT(S)

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.1998, c. 407 (S.B.50), § 12, eff. Aug. 27, 1998, operative Nov. 4, 1998; Stats.1999, c. 300 (A.B.847), § 1; Stats.2000, c. 135 (A.B.2539), § 33; Stats.2010, c. 541 (A.B.2048), § 1.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 17211.

Legislative declarations, operative effect, provisions subject to voter approval, and ballot requirements for provisions in Stats.1998, c. 407, see Historical and Statutory Notes under Education Code § 100400.

Subordination of legislation by Stats.2000, c. 135 (A.B.2539), to other 2000 legislation, see Historical and Statutory Notes under Business and Professions Code § 651.

Derivation

Government Code former § 53080, added by Stats.1986, c. 887, § 8, amended by Stats.1986, c. 888, § 6; Stats.1988, c. 29, § 2; Stats.1989, c. 1209, § 19.

CROSS REFERENCES

"Any school district", "all school districts", defined, see Education Code § 80.
Levies against development projects for construction or reconstruction of school facilities, see Government Code § 65995.
Manufactured housing, sales involving foundation system installation, escrow account, see Health and Safety Code § 18035.2.
Planning and land use, conditions for approval of development projects, adequacy of school facilities, see Government Code § 65996.
Planning and land use, payment of fees, charges, dedications, or other requirements against a development project, scope, see Government Code § 65998.
Planning and land use, payment of fees, charges, dedications, or other requirements, alternative calculation of amounts, see Government Code § 65995.5.
Planning and zoning, requests for audits of local agency fees or charges, adjustment of noncompliant fees not required, see Government Code § 66023.
School districts,
Generally, see Education Code § 35000 et seq.
Governing boards, see Education Code § 35100 et seq.
Reorganization, see Education Code § 35500 et seq.

CODE OF REGULATIONS REFERENCES

School impact fees, see 25 Cal. Code of Regs. § 1338.5.

RESEARCH REFERENCES

ALR Library

16 ALR 6th 289, Validity, Construction, and Application of School Impact Fee Statutes or Ordinances.

2003 ALR 5th 17, Validity, Construction, and Application of School Impact Fee Statutes or Ordinances.

Encyclopedias

CA Jur. 3d Building Regulations and Development § 78, Permanent School Facilities' Fees in General.

CA Jur. 3d Building Regulations and Development § 81, Limits on Amount of Fees or Conditions--Commercial or Industrial Construction.

CA Jur. 3d Building Regulations and Development § 82, Limits on Amount of Fees or Conditions--Residential Property.

CA Jur. 3d Building Regulations and Development § 86, Collection of Fee or Other Requirement.

CA Jur. 3d Dedication § 31, Regulatory Power of Local Agencies.

CA Jur. 3d Zoning and Other Land Controls § 119, Mitigation or Development Fees.

CA Jur. 3d Zoning and Other Land Controls § 266, Levies Against Development Projects for School Facilities.

Treatises and Practice Aids

Cal. Common Interest Devs.: Law and Practice § 12:17, Regulation of Development Fees (Mitigation Fee Act, Gov. Code §§ 66000 et seq.).

Cal. Common Interest Devs.: Law and Practice § 12:135, School Fees.

Cal. Common Interest Devs.: Law and Practice § 12:136, Required Findings for School Fees.

Cal. Common Interest Devs.: Law and Practice § 12:152, Challenges to School Fees.

Cal. Common Interest Devs.: Law and Practice § 12:180, Statutes of Limitation.

Miller and Starr California Real Estate § 25:49, Land Dedication or Fees for School Purposes.

12 Witkin, California Summary 10th Real Property § 248, Dedication Under Other Statutes.

NOTES OF DECISIONS

1. Construction with other laws

Section 53080 providing for school district governing board to levy fee against development project and precluding issuance of building permit for development absent compliance with any levied fee took precedence over former § 53077.5 which provided that local agency which imposes fees on development for construction of public facilities shall not require payment of fees until final inspection or issuance of certificate of occupancy, and school impact fees were accordingly properly collected before building permit was issued at higher rate than would have been applicable to senior citizen housing project at date of final inspection or issuance of certificate of occupancy. RRLH, Inc. v. Saddleback Valley Unified School Dist. (App. 4 Dist. 1990) 272 Cal.Rptr. 529, 222 Cal.App.3d 1602. Statutes 223.4

2. Equal protection

Imposition of school facilities fees on developers did not violate equal protection. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Constitutional Law 3512; Zoning And Planning 1382(4)

3. Preemption

Exactions imposed by school districts on developers of new residential housing within districts were preempted by Gov. Code §§ 53080 and 65995, in that they conflicted with limits imposed on development fees, regardless of support of local voters for exactions. California Bldg. Industry Assn. v. Governing Bd. (App. 2 Dist. 1988) 253 Cal.Rptr. 497, 206 Cal.App.3d 212, modified , review denied. Schools 108(1)

4. Retroactive application

Amendment to this section, limiting school district's authority to impose school facility fees on new residential construction to “habitable area” could not be applied retroactively, where amendment contained no language which expressed or implied that amendment should operate retroactively. Victoria Groves Five v. Chaffey Joint Union High Sch. Dist. (App. 4 Dist. 1990) 276 Cal.Rptr. 14, 225 Cal.App.3d 1548. Schools 91

5. Property subject to levy

This section, as in effect on January 8, 1987, authorized a school district to levy school facility fees on “covered or enclosed” space in new residential development, without regard to whether such space was “habitable.” Victoria Groves Five v. Chaffey Joint Union High Sch. Dist. (App. 4 Dist. 1990) 276 Cal.Rptr. 14, 225 Cal.App.3d 1548. Schools 102

6. Developer

Statutes governing levies against development projects by school districts and for construction or reconstruction of school facilities do not require that developer be “commercial developer” in order to justify imposition of school development fee on particular project; question is whether facility falls within category of commercial use. Loyola Marymount University v. Los Angeles Unified School Dist. (App. 2 Dist. 1996) 53 Cal.Rptr.2d 424, 45 Cal.App.4th 1256, rehearing denied , review denied. Zoning And Planning 1382(4)

7. Commercial use

Building project undertaken by private college involving construction of new business school constituted "commercial use" within scope of statute permitting school district to levy school development fee on commercial development, despite college's argument that it was not commercial institution; use of building would involve payment of tuition in return for educational services, and status of institution was not relevant to determination that particular project constituted commercial use. Loyola Marymount University v. Los Angeles Unified School Dist. (App. 2 Dist. 1996) 53 Cal.Rptr.2d 424, 45 Cal.App.4th 1256, rehearing denied , review denied. Zoning And Planning 1382(4)

8. Fees

School district's fee study did not establish that district's school-impact fees on residential redevelopment construction project satisfied the Mitigation Fee Act's nexus requirements, under which the fees had to be reasonably related to the type of project and the need for public facilities funded by the fees had to be reasonably related to the type of project; the study merely addressed student-generation from new housing which did not displace existing housing, without specifically addressing student-generation from redevelopment projects in which demolished residential units were replaced by new residential units. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Schools 102

School district was not required to address the impact on the school district from the developer's particular residential redevelopment construction project, to show that district's school-impact fee satisfied the Mitigation Fee Act's nexus requirements; what was relevant was the nexus between the fee and the impact on the district from the "type" of development on which the fee was imposed. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Schools 102

Rational connection must exist between school facility fee charged and cost of providing the service. Canyon North Co. v. Conejo Valley Unified School Dist. (App. 2 Dist. 1993) 23 Cal.Rptr.2d 495, 19 Cal.App.4th 243, rehearing denied , review denied. Zoning And Planning 1382(4)

Imposition on real estate developers of district-wide school facility fee of $1.50 per square foot of residential construction was supported by school district's growth plan, which included housing forecast for district, enrollment forecast showing number of new students expected to be added due to the new housing, and facilities analysis showing nature and cost of new facilities required to educate new students from new housing; fact that district enrollment had not increased as predicted was irrelevant. Canyon North Co. v. Conejo Valley Unified School Dist. (App. 2 Dist. 1993) 23 Cal.Rptr.2d 495, 19 Cal.App.4th 243, rehearing denied , review denied. Zoning And Planning 1382(4)

Justification for school facility fee depends upon information available at time fee was imposed. Canyon North Co. v. Conejo Valley Unified School Dist. (App. 2 Dist. 1993) 23 Cal.Rptr.2d 495, 19 Cal.App.4th 243, rehearing denied , review denied. Zoning And Planning 1382(4)

Evidence supported determination that school facilities fees imposed on developers did not exceed reasonable cost of facilities, and that fees therefore did not constitute an invalid "special tax" enacted without voter approval, notwithstanding lack of specific plans for new school facilities. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning 1382(4)

Use of 20-year time frame in projections of report offered in support of imposition of school facilities fees was not arbitrary or unreasonable. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning 1382(4)

Resolution of school district board imposing school facilities fee on developers, identifying as its purpose "new school construction and reconstruction" attributable to residential development, satisfied statutory requirements that agency identify purpose of fee and use to which it is to be put, notwithstanding absence of any concrete construction plans for

school construction; resolution also satisfied statutory requirement that there be determination that reasonable relationship exists between type of development and fee need and uses. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning 1382(4)

9. Exemptions

Statute allowing a school district to impose school-impact fees on new residential construction, and on other residential construction if the resulting increase in assessable space exceeded 500 square feet in same residential structure, allowed imposition of school-impact fees on redevelopment construction project in which 56 apartment units were demolished and replaced by 38 single-family homes; legislative history indicated that legislature was concerned with exempting small home-remodeling projects, and adopting an interpretation which provided no exemption for a redevelopment construction project in which residential units were demolished and replaced with new residential units harmonized the statute with another statute expressly providing an exemption only for residential units destroyed by disaster and subsequently reconstructed without additional square footage. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Schools 102

A residential project built and owned by a county community development commission to be used by low-income rental units is exempt from a school district's levy of school impact fees. 81 Op.Atty.Gen. 183 (June 1, 1998).

10. Review

Trial court's order, granting in part residential developer's first amended petition for writ of mandate regarding school district's imposition of school-impact fees on developer's residential redevelopment project, was a final adjudication that was appealable, where no further judicial action was required to determine the rights of the parties. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Mandamus 187.2

Court of Appeal would take judicial notice of school district resolution adopting fee study, in district's appeal from trial court's order granting in part residential developer's petition for writ of mandate regarding district's imposition of school-impact fees on developer's residential redevelopment project, where the appeal presented the issue whether the fees satisfied the Mitigation Fee Act's nexus requirements, though the resolution had not been placed in evidence in the trial court and the resolution had been submitted to the Court of Appeal by the district only after developer had filed its respondent's appellate brief; the nexus issue had been raised in the trial court, and the parties had presented arguments in the trial court regarding the significance of the fee study. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Evidence 48

Appellate court's determination whether school district's fee study demonstrated district's compliance with Mitigation Fee Act's nexus requirements for imposition of school-impact fees on residential redevelopment construction project did not require the appellate court to improperly engage in fact-finding, though the trial court had not made such a determination in its decision in the mandamus action challenging the validity of the fees; rather, the issue was whether the district's quasi-legislative act, regarding adoption of the study, was arbitrary or capricious, which presented a question of law for the appellate court. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Schools 106.23(1)

School district's adoption of fee study, as basis for demonstrating that district's school-impact fee for residential redevelopment construction project complied with Mitigation Fee Act's nexus requirement for such fees, was a quasi-legislative act, to be upheld unless the action was arbitrary, capricious, or lacking in evidentiary support. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Schools 102

Appellate review was preserved as to whether school district's fee study was adequate to establish that school-impact fees on residential redevelopment construction project complied with Mitigation Fee Act's nexus requirements, where the issue was briefed and argued in the trial court, though district had failed to mention in the trial court that district had adopted the study pursuant to a resolution, and developer's trial-court petition for writ of mandate failed to specifically reference the fee study and the resolution. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Mandamus 187.7

Developer was not required to file a cross-appeal, in order to argue, in school district's appeal from trial court's order granting in part developer's petition for writ of mandate regarding district's imposition of school-impact fees on developer's residential redevelopment project, that district's fee study failed to establish that the fees complied with Mitigation Fee Act's nexus requirements; developer was seeking the affirmance of trial court's order, and developer could assert that the trial court's order was correct on more than one ground. Warmington Old Town Associates, L.P. v. Tustin Unified School Dist. (App. 4 Dist. 2002) 124 Cal.Rptr.2d 744, 101 Cal.App.4th 840. Mandamus 187.9(3)

Decisions by school districts acting pursuant to statutes governing levies against development projects by school districts and for construction or reconstruction of school facilities are reviewed by ordinary mandamus, in which court confines itself to determination whether agency's action has been arbitrary, capricious, or entirely lacking in evidentiary support. Loyola Marymount University v. Los Angeles Unified School Dist. (App. 2 Dist. 1996) 53 Cal.Rptr.2d 424, 45 Cal.App.4th 1256, rehearing denied , review denied. Mandamus 172

Imposition of school facility fees on real estate developers was quasi-legislative. Canyon North Co. v. Conejo Valley Unified School Dist. (App. 2 Dist. 1993) 23 Cal.Rptr.2d 495, 19 Cal.App.4th 243, rehearing denied , review denied. Zoning And Planning 1382(4)

Action of school district imposing school facilities fees is quasi-legislative, and is reviewed under narrower standards of traditional mandate, as opposed to administrative mandate; under traditional mandate, Court of Appeal determines only whether action taken was arbitrary, capricious or entirely lacking in evidentiary support, or whether it failed to conform to procedures required by law. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Mandamus 172

Site-specific review was neither available nor needed to justify school district's imposition of school facilities fees on developers, considering that fees at issue were general ones applying to all new residential development. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning 1382(4)

School district's choice of permanent construction as opposed to less costly, movable structures was a legislative one whose wisdom Court of Appeal could not second guess on review of district's imposition of school facilities fees on developers. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning 1749

Court of Appeal's review for substantial evidence to support imposition of school facilities fees by school district obliged Court to consider all data considered by board of education which was also introduced in court below, whether or not it was presented at public hearings. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning 1754

West's Ann. Cal. Educ. Code § 17620, CA EDUC § 17620

Current with all 2010 Reg.Sess. laws; all 2009-2010 1st through 8th Ex.Sess. laws; and all Props. on 2010 ballots.

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CRB

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School Facility Financing

A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

By Joel Cohen

Prepared at the Request of Senator Quentin Kopp

FEBRUARY 1999

CRB 99-01

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CONTENTS

EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides $6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the $6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the $6.7 billion approved by Proposition 1A, experts estimate that an additional $10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction then it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?

- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a $9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide $6.7 billion to public K-12 schools and $2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the $6.7 billion available to K–12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947[1] when the state legislature created the State Allocation Board.[2] Chapter 243, Statutes of 1947, established the State Allocation Board[3] as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.[4] Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.[5]

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.[6] Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949[7] and 1952[8] established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."[9] During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.[10] The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.[11] This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.[12] School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing[13] in the amount of $250 million.[14] This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that $400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to $250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."[15] In arguments

against the bond, opponents argued that $250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of $185 million was put before the voters. Proponents of this initiative stated that the amount was "extremely" conservative. A comprehensive study by the State Department of Education at that time revealed that $198 million was needed, while the Department of Finance estimated the need at $250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included "poison pill" language that limited the Legislature's ability to appropriate any additional funds for school construction beyond that in the various propositions.[16] If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized $30 million[17] for a new program to finance the rehabilitation and construction of earthquake safe schools,[18] and for the renovation of buildings that the earthquake damaged.[19] This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of $350 million of which $250 million was set aside for structural repairs due to earthquakes.[20] This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,[21] and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.[22] Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.[23]

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.[24] In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.[25]

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of $1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.[26] In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.[27] This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.[28] Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created "priority points" for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district's application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.[29] The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three[30] state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of $550 million[31] that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a $3.8 billion surplus, to fill the gap.[32] In 1979, lawmakers approved a $2.7 billion (in 1978 dollars) "bailout" plan to assist schools and local governments.[33] Within a year, the state surplus was reduced to roughly $1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.[34]

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.[35] School districts that received funds from the state were required to pay rent to the State as low as $1 per year, creating an "unofficial" grant program.[36] In addition, school districts were to contribute up to 10% of the project's cost from local funds.[37] However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.[38] Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.[39] At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.[40] The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be $1.9 billion.[41] Further, CASH estimated that school districts would need an additional $400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.[42] The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of $200 million for school construction projects. This amount was later reduced to $100 million.[43]

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.[44] Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.[45] The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent[46] of the cost that would be necessary to build a new facility not to exceed $125 per student.[47] School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.[48] This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13[49] by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.[50] This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.[51]

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an $800 million bond initiative. It specifically set aside $100 million to cover asbestos removal.[52]

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.[53] As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly $1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over $991 million.[54] Total demand for school facility improvement in 1986 was nearly $2.3 billion - an amount that significantly outweighed the $800 million voters approved in that year's bond initiative.[55] Even with a boost of funding of $150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.[56] By 1988, the shortfall had grown to $4 billion, in spite of the fact that voters had approved $2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.[57] This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at $1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.[58] California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of $8700 per house.[59] By 1990, total development fees for some homes reached $30,000.[60] Statewide, developer fees have increased from $31 million in 1978 to $200 million in 1997.

In 1998, the State Allocation Board increased the fee to $1.93 per square foot.[61] With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.[62] The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an "operating grant" of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.[63]

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of "unhoused students," or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.[64] In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a "substantial"[65] enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a "substantial" year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the "substantial enrollment" criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.[66]

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.[67] A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for $1.6 billion and in 1992 for $2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,[68] and that an estimated $3 billion would be needed annually for new school construction.[69] However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a $1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.[70]

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.[71]

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.[72] The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.[73] Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.[74]

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided $2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need $7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.[75] This $7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed $3 billion to upgrade and modernize its schools.[76] Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.[77] Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.[78]

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked $95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to $200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.[79] The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than $1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,[80] there were times during the past five decades when bond money was not available for periods of four or six years.[81]

The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation.[82] Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue $2 billion a year for 10 years.[83] Governor Wilson proposed $2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides $6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional $10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS		
Title of Bond Initiative	**Date & Year of Election**	**Funds Authorized**
School Building Aid Law of 1949	November 8, 1949	$250,000,000
School Building Aid Law of 1952	November 4, 1952	$185,000,000
School Building Aid Law of 1952	November 2, 1954	$100,000,000
School Building Aid Law of 1952	November 4, 1958	$220,000,000
School Building Aid Law of 1952	June 7, 1960	$300,000,000
School Building Aid Law of 1952	June 5, 1962	$200,000,000
School Building Aid Law of 1952	November 3, 1964	$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	$800,000,000
1988 School Facilities Bond Act	November 8, 1988	$800,000,000
1990 School Facilities Bond Act	June 5, 1990	$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

A) New amount of 1966 bond authorization available for regular program is $185.5 million after deducting $35 million reserved for compensatory education facilities, $9.5 million for regional occupational centers, and $35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.

B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.

C) One billion dollars earmarked for higher education facilities

D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).[84] The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.[85]

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.[86]

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.[87] Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,[88] along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.[89] In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.[90] In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for $4,000 per year. Hardship cases could lease portables for $2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at $9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease–Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for "official" school purposes. "Official" school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state's various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board's Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board's review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district's application fit a program's description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, "special considerations," or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or "specials," and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A "special" occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district's administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.[91] The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.[92]

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.[93] The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional $6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: $3.35 billion available immediately; and $3.35 billion available after July 2, 2000. Of the $3.35 billion that is immediately available, $1.35 billion is earmarked for new construction, $800 million for modernization, $500 million for hardship cases, and $700 million for class-size reduction.

For the second $3.35 billion distribution, $1.55 billion will be available for new construction, $1.3 billion for modernization, and $500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused [94]average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	$5,200	$2,496
Middle School	$5,500	$2,640
High School	$7,200	$3,456

It is anticipated that the initial $1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.[95] The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is "hardship," in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.[96]

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous "Lease Purchase Program." This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a "hardship" case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.[97] Proposition 1A suspends, until 2006, the Court's ruling.[98] With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to $1.93 per square foot.[99] Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board's previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board's previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state. Priority 2 projects-growth and modernization-received 100 percent funding form the state.	Growth projects receive 50 percent funding based on a per pupil formula from the state. Modernization projects receive 80% funding from the state. Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.	Excessive costs are not reimbursed by the state and school districts keep costs savings.
MODERNIZATION PROJECTS	Buildings must be at least 30 years old.	Buildings must be at least 25 years old.
PROJECT APPROVAL	Projects were approved three times in conjunction with the planning, site acquisition and construction phases.	Projects receive one approval (except hardships that receive two approvals).
FUND ALLOCATION	Funds were allotted after each phase.	Funds are allotted only after DSA approves plans, unless there is a hardship.
MAINTENANCE OF FACILITIES	Required school districts to set aside two percent of their general fund for ongoing maintenance.	Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.
PROPERTY LIENS	State maintains a lien to properties it funds.	State does not hold liens, and existing liens are released.
ARCHITECTURAL APPROVAL	Division of State Architect approved all plans.	The Division of State Architect or a state approved private engineering firm may approve plans.

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was $1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is $1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.[100] This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.[101]

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.[102] The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.[103] Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.[104] One can obtain information in person or from the office's Internet site.[105] In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be "bumped" up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive $6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly $10 billion, while some estimates have put the figure at $40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately $25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.[106]

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about $2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

ENDNOTES

[1] Chapter 243, Statutes of 1947.

[2] If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. There are school districts that repair and construct school buildings without the assistance of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

[3] Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

[4] California Government Code 15502.

[5] Government Code 15490.

[6] While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

[7] Amendments to the Constitution, Proposition 1, November 8, 1949.

[8] Amendments to the Constitution, Proposition 4, November 4, 1952.

[9] Op.cit.

[10] California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

[11] This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

[12] Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

[13] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[14] Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

[15] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[16] Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

[17] School Building Safety Fund, December 1971.

[18] The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

[19] Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

[20] Ibid.

[21] State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

[22] Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

[23] Op.cit., p. 2.
[24] Ibid.
[25] Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.
[26] Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.
[27] Section 17700 et al., Education Code.
[28] Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.
[29] Op.cit., p. 2.
[30] Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.
[31] Proposition 1 of 1976 would have provided $250 million, and Proposition 1 of 1978 would have provided $300 million.
[32] Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.
[33] Ibid.
[34] Karmin, Bennett. California's Bankrupt Schools." New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A–14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.
[35] Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.
[36] While the loan program was still on the books, the state made exceptions to aid school districts.
[37] California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.
[38] California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.
[39] Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.
[40] Ibid.
[41] Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).
[42] This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.
[43] Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.
[44] Assembly Bill 62, Chapter 820, Statutes of 1982.
[45] California Department of Education. California Year-Round Education Directory 1997-98.
[46] For example, a school district that needed to build a new elementary school that cost $4 million could receive $400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

[47] Chapter 886, Statutes of 1986, added provisions that capped the grant at $125 per student.
[48] School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than $1.8 billion in construction costs since its inception. In 1997-98, $66 million was allocated from the "mega item" of the state budget. About $40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
[49] Proposition 46 on the June 1986 Ballot.
[50] Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
[51] Proposition 46: Property Taxation, June 3, 1986.
[52] DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.
[53] School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
[54] Op.cit.
[55] Op.cit.
[56] State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
[57] AB 2926, Statutes of 1986.
[58] These were referred to as the Mira, Hart, Murrieta court cases.
[59] Later that year, fees were capped by the Legislature at $1.50 per square foot on residential units statewide.
[60] Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
[61] Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.
[62] Chapter 1261, Statutes of 1990.
[63] Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
[64] Op.cit.
[65] Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
[66] Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
[67] The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
[68] Department of Finance, School Populations Projections. 1998.
[69] Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.
[70] Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
[71] County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
[72] Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.
[73] The passage required a two-thirds vote by the legislature.
[74] November 1993, Proposition 170 failed by 70 percent.

[75] Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the $7 billion, $1.6 billion was estimated for overhauls of buildings over 30 years old, and $5.6 billion for new construction and classroom additions.

[76] Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

[77] If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

[78] See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

[79] Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

[80] State bonds were proposed biannually in 1988, 1990, and 1992.

[81] In 1976 and 1978 bond measures were defeated by the electorate.

[82] "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

[83] "Huge School Bond Mulled" California Public Finance, September 8, 1997, p. 1.

[84] This included the type of facility and the number of teaching stations (classrooms).

[85] The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

[86] For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid $48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

[87] A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

[88] This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

[89] Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

[90] Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

[91] Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

[92] Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

[93] To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

[94] The number of students above the maximum number set by CDE to be in a classroom.

[95] The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

[96] In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

[97] The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

[98] In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see Mira Development Corporation v. City of San Diego, William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles, Murietta Valley Unified School District v. County of Riverside. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

[99] If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

[100] Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

[101] However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

[102] Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

[103] One streamlined step is the self-certification process in the Lease Purchase Program.

[104] However, in light of the office's accomplishments, the author had to request information routinely more than once.

[105] www.dgs.ca.gov/opsc.

[106] School Services of California.

FINANCING SCHOOL FACILITIES IN CALIFORNIA

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Executive Summary

California's system of school facility finance is best described as a partnership between the state and local school districts. The state provides districts with financial support for new school construction and modernization projects through the School Facility Program (SFP), which was established in 1998. The SFP represented a major change in the way the state financed school facilities and was designed to simplify the overall structure of the state's schools facilities program and create a more transparent and equitable funding mechanism. Under the program, new school construction projects are funded on a 50/50 state and local matching basis while modernization projects are funded on a 60/40 basis. Although the program has gone through numerous changes since 1998, the basic structure of the SFP is still in place today. Since 1998, voters in California have approved three statewide bond issues to fund the School Facility Program and are scheduled to vote on a fourth this November. The three bond issues that have passed provided K-12 public schools with $28.1 billion in state funding for school facility needs. If approved by voters in November of this year, Proposition 1D, the Kindergarten-University Public Education Facilities Bond Act of 2006, will provide an additional $7.3 billion in state funding. Local school districts finance their share of school construction and modernization project costs primarily with revenue raised through local general obligation bond elections. Since 1998, those local bond elections have provided school districts with an additional $36 billion to finance school facility improvements.

This study provides a comprehensive review of California's system of school facility finance. In so doing, it attempts to answer five broad questions related to the way California finances its school facility needs: (1) How has the level of school facility funding changed over time and how does it compare to the level of funding in other states; (2) How is the level of school facility funding distributed across school districts; (3) What are the primary causes of inequities in school facility funding across districts; (4) Is facility funding reaching those districts with the greatest facility needs; and (5) How do charter schools obtain funding for school facilities and what are the special issues related to charter school facility finance? This report attempts to answer those questions by reviewing the history of school facility finance in California, documenting California's current system of school facility finance, and examining the level and distribution of school facility funding since 1998.

School Facility Funding has Increased Dramatically in Recent Years

Since the passage of Proposition 1A in 1998, California's system of school facility finance has become more streamlined and the level of support for K-12 school facilities, both state and local, has increased dramatically. As noted above, since 1998 voters have approved $28.1 billion in statewide general obligation bonds and an additional $36 billion in local general obligation bonds to support school construction and modernization projects throughout the state. Prior to 1998, spending per pupil on school

facilities in California lagged behind the rest of the nation and even further behind states with similar enrollment growth trends. Since 1998, the level of spending has surpassed the national average and is now comparable to the level found in other states with similar enrollment growth rates.

There are Wide Disparities in School Facility Funding across Districts

Revenue per pupil for school construction and modernization varies widely across districts. For example, in unified school districts the difference between the 75th and 25th percentiles of facility revenue per pupil (total revenue raised over the period 1998-2005 divided by student enrollment) is over $10,000. Similar disparities in facility funding exist among elementary and high school districts. Part of the variation across districts in facility funding is due to differences in need, another part is due to differences in the ability to pay for school facility projects. In terms of need, districts with higher enrollment growth rates and those that have not invested heavily in school facilities in the recent past tend to have substantially higher revenue per pupil. In terms of ability to pay, districts with higher property wealth also tend to have substantially higher revenue per pupil. In particular, disparities in school facility funding across districts is systematically related to the assessed value of property within districts. Districts with higher assessed value per pupil are able to raise substantially more revenue through local general obligation bond issues and consequently, tend to have substantially higher total revenue per pupil. There also appears to be little relationship between facility revenue and the ethnic composition of districts. If anything, districts with higher concentrations of minority students tend to have higher facility revenue per pupil.

Critically Overcrowded Schools Serve a Disproportionate Number of Disadvantage and Minority Students -- They Also Have Higher Facility Funding

In 2002 the state legislature created the Critically Overcrowded Schools (COS) program to help direct state aid towards districts with the greatest facility needs. The program was funded with $4.1 billion of Proposition 47 and 55 bond revenue. To qualify for COS program funding, a school must have a student density that is double the density recommended by the California Department of Education. Critically overcrowded schools contain a disproportionate number of disadvantaged and minority students. For example, among schools classified as critically overcrowded the average percentage of students qualifying for free or reduced price lunch is 77%. Among all other schools that percentage is only 45%. Districts that contain critically overcrowded schools also tend to have higher facility revenue per pupil. For example, among the 42 districts that contain critically overcrowded schools, local bond revenue between 1998 and the present averaged $5,722 per pupil and total revenue per pupil averaged $11,323. In other districts local bond revenue averaged $3,825 and total revenue averaged $9,061. Thus, on average, total revenue per pupil is approximately 25% higher in districts that contain critically

overcrowded schools. Los Angeles Unified, which contains nearly 50% of all critically overcrowded schools, has experienced a particularly large increase in facility funding. In that district, total facility funding per pupil is more than twice the statewide average.

The Facility Dilemma Facing Charter Schools Is Improving but Challenges Still Remain

Since charter schools were first introduced in California in 1993, they have faced significant facility challenges. During the 1990's there were few facility funding options available to charter schools and most charter schools, particularly non-conversion charter schools, faced significant barriers to obtaining adequate school facilities. The facility dilemma facing charter schools began to improve in 2000 when California voters passed Proposition 39. Prior to the passage of Proposition 39, districts were only required to make facilities available to charter schools if such facilities were not currently being used for instructional or administrative purposes or if such facilities had not been historically used for rental purposes. Under the charter school provisions contained in Proposition 39, it became the legal responsibility of school districts to make every reasonable effort to house charter school students in facilities that were essentially equivalent to those used to house other students within the district. Thus, Proposition 39 substantially increased the responsibility of school districts to provide charter schools with adequate school facilities. In recent years a number of grant and loan programs have also been established to help charter schools obtain adequate school facilities. For example, Propositions 47 and 55 contained $400 million in funding for charter school facilities. Proposition 1D, if approved by voters in November of this year, would provide an additional $500 million in facility funding for charter schools.

Although the facility dilemma facing charter schools has improved in recent years, challenges still remain. For example, according to a 2002 survey of charter schools conducted by the Rand Corporation, 62% of all charter schools surveyed stated they were struggling to finance their school facility needs. In addition, a 2005 survey of charter schools conducted by EdSource revealed that among the 135 charter schools that submitted Proposition 39 requests for facilities to their districts, 53 or 39% of schools reported they did not receive satisfactory facilities in response to their initial request or through continued negotiations.

1. Introduction

On November 7th of this year, Californians will vote on Proposition 1D, the Kindergarten-University Public Education Facilities Bond Act of 2006. If approved by voters, the Act would provide K-12 public schools with $7.3 billion in funding for new school construction and modernization projects. It would also represent the fourth such bond issue approved by voters since 1998. Collectively, those four bond issues will have provided $35.4 billion in state funding for K-12 school facility needs. Local school districts have also been active in securing funding for school facilities: since 1998, local voters have approved over $36 billion in local general obligation bond issues to finance school facility improvements.

California's willingness to support school construction and modernization efforts comes in the wake of several reports which concluded that underinvestment in school facilities had resulted in a school facilities crisis. For example, according to a 1995 report conducted by the U.S. General Accounting Office, the condition of California's school facilities ranked among the worst in the nation.[1] Furthermore, as recently as 2001, the Legislative Analyst's Office (LAO) reported that about one-third of all schoolchildren in California attended an overcrowded school or one in need of modernization.[2] To correct those problems, the LAO estimated that state and local governments would need to invest $30 billion in the near term and significantly more in the future to meet California's ongoing school facility needs.

The purpose of this report is to provide a comprehensive review of California's system of school facility finance. Section 2 reviews the history of school facility finance in California. That chapter borrows liberally from Cohen (1999) who provides an excellent account of how California's system of school facility finance has evolved over time. Unfortunately, that account ends in 1999, just as the state was adopting a new system of school facility finance. Thus, section 2 builds on the work of Cohen by providing a review of California's system of school facility finance from the origins of California statehood to the present. Following that review, section 3 examines how school facility funding in California has changed over time and how it compares to the level of funding in other states. That section shows that school facility spending in California has fluctuated dramatically over time. It also shows that until recently, spending per pupil on school facilities in California lagged behind the rest of the nation. For example, between 1988 and 1996, California spent about 20% less on school facilities than the rest of the nation. The gap in school facility spending was even larger if one compares California to other states with similar enrollment growth trends, such as Texas and Florida. However, since 1998, spending per pupil on school facilities in California has increased dramatically. Facility spending in California now

[1] U.S. General Accounting Office (2005).
[2] Legislative Analyst's Office (2001).

exceeds the national average and it is as high, if not higher, than the level of spending observed in states with similar enrollment growth.

After providing an historical overview of California's system of school facility finance, Section 4 turns to describing the current system. In particular, the section provides an overview of the School Facility Program which was established in 1998 with the enactment of AB 50 and the passage of Proposition 1A. The section documents the various steps school districts must follow to access state funds for new school construction and modernization projects. It also provides an overview of the Critically Overcrowded School Facilities (COS) program which was established in 2002 to address several concerns about the equitable distribution of Proposition 1A funds.

Sections 5, 6 and 7 turn to examining the level and distribution of school facility funding since the enactment of the School Facility Program in 1998. Section 5 shows that since 1998 state and local governments in California have raised over $71 billion to fund new school construction and modernization projects throughout the state. State and local general obligation bond revenue accounts for 84% of that revenue with local general obligation bonds being the largest single source of revenue (approximately 53%). The section also shows that school facility funding varies widely across districts. The causes of these wide disparities in funding are the focus of section 6. That section shows that part of the variation in facility funding can be explained by differences in need. Districts with higher enrollment growth, and districts that have not invested heavily in school infrastructure in the recent past, tend to have significantly higher levels of facility funding. However, section 6 also finds that disparities arise from differences across districts in the ability to pay for new school construction and modernization projects. In particular, school facility funding varies systematically with district property wealth. High-wealth districts tend to have significantly higher local general obligation bond revenue per pupil and consequently, significantly higher total revenue per pupil.

Section 7 examines whether districts with the most critical facility needs receive higher levels of facility funding. To date, no comprehensive measure of school facility need is available in California. However, there are two objective measures of need that can be examined: schools that are classified by the California Department of Education as critically overcrowded and schools that operate on a multi-track year-round calendar. Section 7 begins by examining how the characteristics of critically overcrowded and multi-track schools differ from other schools. It then examines how facility funding in districts that contain critically overcrowded or multi-track schools compares to other districts. The section reveals that, compared to other schools, those that are classified as critically overcrowded or operate on a multi-track calendar, tend have significantly higher proportions of disadvantaged and minority students. It also shows that districts that contain critically overcrowded schools tend to receive significantly higher facility funding, particularly Los Angeles Unified.

Section 8 examines school facility funding for charter schools in California. It begins by discussing the unique facility challenges charter schools face and how those challenges have affected their ability to obtain adequate facilities. The section then documents how Proposition 39 impacted the ability of charter schools to obtain adequate school facilities. It also discusses the various sources of revenue that have recently become available to charter schools to finance their school facility needs. The report concludes by summarizing the main findings presented in Chapters 2 through 8 and linking those findings to research reports that have recommended various changes to the current system of school facility finance in California.

2. A History of School Facility Finance

California's system of school facility finance has evolved slowly over time. Up until the mid-1900's, school construction and modernization projects were funded almost entirely with local revenue. State involvement in the system emerged with the creation of the State Allocation Board in 1947, which was directed by the state legislature to allocate state funds for school construction and renovation. Since that time, school facility finance has evolved from a locally-financed system to a system best described as a partnership between local school districts and the state. This section describes the history of school facility finance in California and documents the various programs that have been used to finance K-12 facilities.

From the early days of California statehood until 1933, state involvement in school facility finance was restricted to providing land grants to local communities for the purpose of establishing public schools. The State Constitution of 1849 mandated the state legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement."[3] The Constitution set aside large tracts of public land for the creation of public schools and mandated that every district in the state operate a public school for at least three months a year. The construction and renovation of these schools was financed entirely with local tax revenue.[4] In 1879, the California State Constitution was revised and school districts were granted the authority to issue bonds to finance school construction projects, subject to the approval of two-thirds of voters within the district. Local bonds were repaid with property tax revenue raised from a special tax assessment on all property located within a school district. School districts could issue additional bonds up to their debt capacity level which was set at 1.25 percent of assessed value for elementary and secondary districts and 2.5 percent for unified districts. From that

[3] Constitution of the State of California, 1849. Text obtained from California State Archives: http://www.ss.ca.gov/archives/level3_const1849txt.html

[4] During the early years of California statehood, state aid for education was limited to support for teacher salaries. Districts built schools when they could raise enough tax revenue or when civic-minded residents volunteered their time and resources to build a school. (Falk, 1968).

time forward, proceeds from local school bond elections became the primary source of local revenue for school construction projects.

The state first became involved in school construction and renovation activities in 1933, following the Long Beach earthquake. The earthquake, which struck just hours after classes ended on March 10th 1933, caused numerous school buildings in Long Beach and surrounding communities to collapse and provoked "public outcry over the vulnerability of school building to earthquake-related damage."[5] In response, the state legislature passed the Field Act on April 10th 1933.[6] The Act mandated the Division of the State Architecture (DSA) to develop earthquake-resistant design and construction for all public schools in the State. It also required architects, engineers and inspectors to file reports verifying that schools were in compliance with the provisions of the Field Act.[7] Thus, state involvement in school construction and renovation began with state oversight of construction design and mandatory construction inspections. Although the Field Act has been updated overtime, the basic structure of the Act is still in place today.[8]

The post-World War II baby boom caused a surge in student enrollment in California which in turn led to a public school "building boom" starting in the late 1940's.[9] From the late 1940's to the early 1960's, schools were built in record numbers.[10] In the late 1940's the State Legislature recognized that school districts would need financial assistance to house California's growing number of students. In response, the state legislature established the State Allocation Board in 1947 and charged the board with allocating state funds for the construction and renovation of schools.[11] In addition to its allocation role, the Board is also responsible for establishing policies and regulations for the programs it oversees.

In 1949, the Legislature passed the State School Building Aid Law which was designed to provide assistance to school districts for the construction and acquisition of new school facilities. To secure funding for the new program, California's first statewide school bond initiative, Proposition 1, was placed on the November 1949 statewide ballot and approved by voters. The proposition authorized the sale of $250 million of state bonds for the purpose of providing school districts with funds for new school construction and improvement. The State School Building Aid Law of 1949 was set up as a loan program. To enter the program, a district had to be bonded to capacity and obtain voter approval to

[5] Heumann (2002), p. 9.
[6] The Field Act was named after California State assembly member Charles Field who spearheaded the legislation.
[7] State of California Seismic Safety Commission (December 2004), p. 6.
[8] For a complete description of the Field Act see the California education code section 17280-17317.
[9] From 1950 to 1960, student enrollment in California doubled from a total enrollment of 1,689,425 in 1950 to a total enrollment of 3,368,101 in 1960. (California Department of Education, Enrollment Reports for 1950 – 1979).
[10] According to EdSource, most of California's schools were built during this period.
[11] The State Allocation Board consists of ten members: the Director of the Department of Finance, the Director of the Department of General Services, the Superintendent of Public School Construction, one person designated by the Governor, three State Senator, and three State Assembly Members.

accept a state loan. Districts were then required to maintain a property tax rate equivalent to the rate necessary to finance general obligation bonds at the district's debt capacity level. After 30 years, if the state loan was not fully repaid, any outstanding balance was forgiven.[12]

For the next two decades, California's system of school facility finance remained relatively unchanged: school districts provided most of the funds for new school construction and the state provided limited assistance via loans for the State School Building Aid program.[13] Between 1952 and 1966, California voters approved 7 statewide school bond initiatives, which provided $1.54 billion for the State School Building Aid program. Throughout this period, state aid was limited to loans that could only be used for the purpose of new school construction. School districts wishing to renovate or modernize existing school facilities had to finance those renovations with local revenue.

By the late 1960's, many of California's schools were over 20 years old and in need of renovation. Recognizing this need, the state legislature in 1966 declared that it was in the "interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities."[14] In 1968, state assistance for the modernization of urban schools built prior to 1943 was added to the education code.[15] Further changes to California's system of school facility finance began to emerge in the early 1970's. In response to damage caused by the 1971 San Fernando earthquake, the legislature designed a new program to provide funding for earthquake-damaged schools and schools that were not in compliance with the Field Act. The new program was funded with revenue from two statewide school bond initiatives: the School Building and Earthquake Reconstruction and Replacement Bond Law of 1972, which provided $350 million for the construction and renovation of schools, and the State School Building Aid and Earthquake Reconstruction and Replacement Bond Act of 1974, which provided an additional $150 million.[16] While most state aid to school districts remained in the form of loans, the new legislation included provisions to forgive loans for school districts that had reached their bonding capacity and also provided grants to school districts that would otherwise not be eligible for funding. Thus, by the early 1970's, state involvement in school facility finance had expanded to include aid for school renovation and modernization and the role of the state had begun to change from one of a primary lender to one of a grantor.

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[12] California Education Code, State School Building Aid Law, 1949, Section 15738.

[13] The State School Building Aid Law of 1949 was updated when the State School Building Aid Law of 1952 was passed by the state legislature. While more detailed, the new program retained the same basic structure of its predecessor.

[14] California Education Code, School Housing Aid for Rehabilitation and Replacement of Structurally Inadequate School Facilities, Section 16312.

[15] California Education Code, Urban School Construction Aid Law of 1968, Sections 16700-16734.

[16] In November 1972, California voters also passed Proposition 9, the Bond Vote for Structurally Unsafe School Buildings. The proposition allows districts to issue general obligation bonds, subject to the approval of a simple majority of voters (rather than a super-majority) for the purpose of repairing or replacing structurally-unsafe school buildings.

In 1976, the state legislature enacted the Leroy Greene State School Building Lease-Purchase Law. The law established a fund to provide loans to school districts for both new construction and modernization. Eligibility for new construction funding was based on housing capacity. To qualify, a district had to demonstrate that existing seating capacity was insufficient to house either current student enrollments or anticipated student enrollments based on a 5-year projection of enrollment growth. To qualify for modernization funding, a school building had to be at least 30 years old, or in the case of a portable classroom, at least 20 years old. The new program also established a system of "priority points" for the allocation of state funds. In the original 1976 legislation these priority points depended on factors such as the number of unhoused students, projected enrollment growth rates and the degree of renovations necessary.[17] Although the Lease-Purchase Program was signed into law in 1976, funding for the new program was never approved by voters: in June of 1976 voters rejected a $200 million state bond initiative that was designed to fund the new program. At first, the lack of funding appeared to be of little consequence. Between 1970 and 1982, student enrollment in California's public schools was declining and hence there was little demand for state funds. Things began to change, however, following the passage of Proposition 13 in June of 1978.

The passage of Proposition 13 shifted the primary responsibility for financing new school construction and modernization from local school districts to the state. By prohibiting property tax overrides to fund local general obligation bonds, Proposition 13 eliminated the primary source of local revenue for new school construction and modernization. Consequently, in the aftermath of Proposition 13, school districts were forced to turn to the state to meet their school facility needs. The state legislature responded to Proposition 13 by turning the Lease-Purchase Program into what essentially amounted to a grant program. School districts that chose to participate entered into a 40-year lease-purchase agreement with the state, with payments of $1 per project per year. Although school districts were expected to contribute up to 10% of a project's cost, many school districts could no longer raise the required match and thus asked the State to fund their entire projects.[18] The increased demand for state funding, coupled with the fact that in June of 1978, voters once again rejected a statewide bond initiative designed to fund the Lease-Purchase Program, led to a large shortfall in funding for new school construction and modernization.

The state legislature responded to the need for school facility funding in a number of ways. First, in 1982 and then again 1984, it placed school bond initiatives on the statewide ballot. Voters approved both initiatives, which collectively provided the Lease-Purchase Program with $950 million. Second, in 1982, the state legislature passed legislation allowing school districts, for a ten year period, to pay just 1

[17] Cohen (1999), p. 12.
[18] Cohen (1999), p. 13.

percent of the costs of state-funded projects rather than the 10 percent required in the original 1976 Lease-Purchase Program legislation. Third, in 1982, the state also implemented the Mello-Roos Community Facilities District Act. The Act allows school districts to create Community Facility Districts (CFD's) within the boundaries of the district to fund new school construction. The owners of land within the boundaries of a CFD are assessed a special tax to finance new construction projects. The tax must be approved by two-thirds of the voters within the proposed CFD or, when the district has fewer than 12 property owners, by majority vote of the owners.[19] Fourth, to reduce the costs associated with school construction projects, in 1983 the state legislature passed legislation (Chapter 498, Statutes of 1983) giving districts a financial incentive to place students into a multi-track year-round education (MTYRE) program. Districts that participated in the program were eligible for a grant of up to 10 percent of the cost that would have been necessary to build a new facility to house the students.[20]

By the mid-1980's however, it became apparent that these measures were not sufficient to meet the growing facility needs of school districts. Student enrollment in California had begun to grow again in the 1980's, creating further pressure on the state for increased facility funding. In addition, both the federal and California state governments passed asbestos removal legislation in 1986, which led to an increase in the number of applications for modernization and rehabilitation funding. By June of 1986, the State Allocation Board had received applications for funding that totaled nearly $2.3 billion.[21] To meet the ever-growing demands on the Lease-Purchase Program, the state legislature placed seven statewide bond initiatives on the ballot between 1986 and 1992. All seven of the bond initiatives passed, providing the state with an additional $6.8 billion for school facility projects. Voters and the state legislature also passed a number of new programs designed to reinstate the authority of local school districts to raise revenue for new school construction and modernization. In June of 1986, voters passed Proposition 46, which reestablished the authority of local school districts to issue general obligation bonds, subject to the approval of two-thirds of the voters within a district. Also in 1986, the state legislature approved AB 2926 which authorized school districts to directly impose developer fees to finance new school construction. Developer fees could only be imposed on new industrial, commercial, or residential development. Furthermore, the maximum fee a district could impose was set at $1.50 per square foot for residential development and $0.25 per square foot for commercial and industrial development.[22]

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[19] Rivasplata (1997), p. 42.
[20] Cohen (1999), p. 14.
[21] Cohen (1999), p. 15.
[22] While fees were capped in theory, some school districts managed to find ways around the caps. In particular, several school districts argued that the caps only applied to the school district rate. As a result, they petitioned their city and/or county governments to impose additional fees, leading to a total fee that exceeded the cap of $1.50 per square foot for residential property and $0.25 per square foot for commercial property. The cases led to three

As the 1990's unfolded, demands on the Lease-Purchase Program continued to mount. Attempts to conserve limited resources led the state legislature and the State Allocation Board to implement numerous changes to the program. In 1990, a new priority system was implemented, based on when an application was received and a complex set of additional priorities. One year later, the priority system was changed to include six priorities of funding. A district was given priority 1 funding status if the district covered at least 50% of the project costs with local funds and had a substantial enrollment in year-round schooling programs. Priority 2 status was granted if the district requested 100% state funding of the project and had a substantial enrollment in year-round schooling programs. Districts received lower priority if they did not have substantial enrollment growth, were not requesting funds for a year-round schooling project, or were requesting 100% funding from the state. Due to the limited funding available from the state, the vast majority of projects that received funding were either priority 1 or priority 2 projects. In 1996 the priority system was changed yet again to take into consideration new class-size reduction legislation and finally, in 1997, the priority system was replaced altogether by a first-come first-served system.[23] Despite these numerous changes to the Lease-Purchase Program and the passage of another $3 billion statewide bond initiative in March 1996, the backlog of projects faced by the State Allocation Board remained at approximately $6 billion at the end of 1996.

In November 1998, the legislature passed SB 50, The Leroy Greene School Facilities Act of 1998. The legislation replaced the Lease-Purchase Program of 1976 with a new program called the School Facility Program (SFP). The new state program was funded with bond revenue from Proposition 1A, a $9.2 billion state bond initiative approved by voters in November of 1998. The initiative provided $6.8 billion for K-12 school construction projects over a four-year period. Specifically, the bond included $2.9 billion for new school construction, $2.1 billion for modernization, $1 billion for districts facing financial hardship, and $700 million for class-size reduction projects. The School Facilities Program represents a major change in the way the state finances school facilities. Under the new program, state funding for new school construction and modernization is provided in the form of per-pupil grants with supplemental grants available for site development, site acquisition and other site-specific costs.[24] New school construction projects are funded on a 50/50 state and local matching basis while modernization projects are funded on a 60/40 state and local matching basis.[25] The SFP also implemented numerous reforms to the old Lease-Purchase program that were designed to stream-line the application process, simplify the overall structure of the state school facilities program, and create a more transparent and

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separate law suits in which the courts ultimately upheld the practice. The three decisions collectively became known as the Mira-Hart-Murietta decisions.

[23] Cohen (1999), p. 17.

[24] School Facility Program Handbook (February 2006), p. 1.

[25] Under the original 1998 legislation, modernization projects were funded on an 80/20 state and local matching basis. The matching rate was reduced to a 60/40 state and local basis following the passage of AB 16 in 2002.

equitable funding mechanism. In his excellent review of the history of school facility finance in California and the role of the State Allocation Board, Joel Cohen notes:

> Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.[26]

The basic structure of the School Facilities Program remains in place to this day and is discussed in detail in section 4.

While the Leroy Greene School Facilities Act of 1998 (henceforth SB 50) was designed to streamline and simplify the process for allocating state funds, it wasn't long before the new program was called into question. In March of 2000, the *Godinez v. Davis* lawsuit was filed in the Los Angeles Superior Court on behalf of a group of parents and students from the Los Angeles Unified School District. The suit contended that the method by which Proposition 1A funds were allocated discriminated against large urban school districts. Among other things, the lawsuit called into question the priority point system the State Allocation Board (SAB) used to allocate Proposition 1A funding. The original SB 50 legislation required the SAB develop a priority point system, based upon the percentage of currently and projected unhoused pupils, to allocate state funds once those funds became insufficient to fund the applications submitted by school districts.[27] In 1999, AB 562 was enacted to make the timing of implementing priority points more specific. The new legislation required that the system of priority points must be implemented once either of the following two conditions were met: (1) funds necessary to fund approved applications exceed funds available, or 2) only $300 million remains in new construction funding.[28] In the case of *Godinez v. Davis*, the plaintiffs argued (among other things) that in large urban districts, it took longer to file a formal application for reasons beyond the direct control of the district and since the SAB allocates funds only to those districts that have filed a formal application for funding, the funding process put large urban districts at a disadvantage. In essence the plaintiffs argued that, even though large urban districts were "high need" districts, and thus should receive a high priority for state funding, the state funding process placed such districts at a disadvantage since it took them longer to file applications. In August of 2000, Judge Yaffe, the presiding judge in the *Godinez* case, ruled that the State

[26] Cohen (1999), p. 1.
[27] Up until the point where state funds became insufficient, Proposition 1A funds were allocated on a first-come first-served basis.
[28] Coalition for Adequate School Housing, News Archives, July 11, 2001.

Allocation Board was not apportioning funding in accordance with AB 562 and ordered the SAB to develop rules that would provide greater funding opportunities for high need districts such as LA Unified.[29]

In response to the court's ruling, the SAB adopted a revised priority system in December of 2000. The new system set aside $450 million of remaining Proposition 1A funding for high-priority urban districts until August of 2002. It also required that the remaining $1 billion in new construction funding be released on a quarterly rather than monthly basis at the rate of approximately $125 million per quarter and that those funds be allocated to projects based upon their priority point order. As a result of these changes, the *Godinez* plaintiffs agreed not to pursue any further litigation.

Around the same time *Godinez v. Davis* was first making its way through the courts, plaintiffs in *Williams v. State of California* filed a class-action lawsuit in the San Francisco Superior Court. Among other things, the plaintiffs argued that the state failed to provide students with equal access to safe and decent school facilities, particularly low-income students and students of color. Specifically, the plaintiffs argued that disadvantaged and minority students were more likely to be housed in facilities with "extremely hot or cold classrooms, unkempt or inadequate bathroom facilities, and unrepaired and hazardous facilities such as broken windows, vermin infestations, leaky roofs, or mold."[30] In August of 2004, the state agreed to a settlement. As part of that settlement, the state agreed to dedicate $800 million in funding for emergency repairs for low-performing schools.[31]

To address some of the problems encountered after the first round of funding for the new School Facility Program, the state legislature enacted AB 16 in April of 2002. AB 16 added to the SFP a new program called the Critically Overcrowded Schools program. The program allowed districts with schools that were classified by the California Department of Education as critically overcrowded to reserve state funding for new school construction for a period of up to four years. Thus, the Critically Overcrowded Schools program allowed districts such as LA Unified, who argued it took them longer to file applications for funding, to reserve state funds prior to submitting an application for funding.[32] AB 16 also put before voters two new statewide school bond issues: Proposition 47 and Proposition 55. The two bond issues, which were respectively approved by voters in November of 2002 and March of 2004, provided an additional $21.4 billion in state funding for school facility projects. The bonds include $4.8 billion to

[29] Building Industry Association of Southern California, February, 2001.
[30] Pastor and Reed (2005), p. 22.
[31] The settlement requires the state to allocate $800 million to a new School Facilities Emergency Repair Account which will reimburse districts for emergency repairs. Only schools ranked in the bottom three deciles of the 2003 Academic Performance Index (API) are eligible for emergency repair funding.
[32] Other significant elements of AB 16 were the creation of a Joint-Use Program and the elimination of priority points for new school construction and modernization projects. In essence, the need for a priority point system was eliminated by the creation of the Critically Overcrowded Schools program.

fund previously-approved projects that did not receive Proposition 1A funding, $4.1 billion for the Critically Overcrowded Schools program, $3.7 billion for school modernization projects and $8.8 billion for new school construction.[33]

In addition to passing two of California's largest school bond initiatives, in November of 2000 California voters also passed Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act. The Act allowed a district to issue local general obligation bonds subject to the approval of 55 percent of voters (rather than two-thirds voters), conditional on several accountability requirements. Specifically, the Act required school districts to set up a citizen's oversight committee to ensure bond proceeds were allocated properly. It also required school districts provide a list of specific projects to be funded with any bond revenue and to conduct annual performance and financial audits. Districts seeking to avoid these requirements may still ask their electorate to approve a bond issue but any such bonds must be approved by a two-thirds majority rather than a 55 percent majority.

Proposition 39 also had ramifications for School Facility Improvement Districts (SFID's) which consist of a portion of the territory within a school district. Similar to school districts, SFID's can issue general obligation bonds for new school construction subject to the approval of voters within the SFID. The state legislature authorized the establishment of SFID's in 1998 to address a problem faced by districts that currently had a Mello-Roos Community Facility District (CFD) within their boundaries.[34] Since voters within a CFD were already being taxed to support school facilities within their CFD, the passage of a district-wide general obligation bond issue would lead to the double taxation of residents within the CFD.[35] Up until 2002, the issuance of general obligation bonds by a SFID required the approval of two-thirds of voters within the SFID. Senate Bill 1129, which became effective on January 1st of 2002, permits SFID's to hold a Proposition 39 school bond election and therefore issue bonds subject to the approval of 55 percent of voters.

Looking towards the future, the Office of Public School Construction estimates that even after all Proposition 47 and 55 funds are depleted by 2007, the state will need an additional $6.8 billion to fund its portion of new school construction and modernization projects.[36] As a result, the state legislature enacted AB 127, the Kindergarten-University Public Education Facilities Bond Act of 2006, in May of 2006. The legislation provides for a new statewide bond issue of $10.4 billion dollars to fund K-12 and higher education facility needs. If approved by voters in November of 2006, the legislation would provide K-12

[33] de Alth and Rueben (2005).
[34] SFID's were first established by the state legislature in 1994 but no SFID's were formed in response to the legislation. Subsequent legislation in 1996 and 1997 broadened the potential use of SFID's and the first SFID was established in 1998. As of June of 2006, 25 SFID elections had been held of which 13 were successful.
[35] SFID's can only be established in districts that currently have a CDF within in their boundaries and they may not include the territory of the CFD.
[36] Notes from the Assembly Education Committee, Education Infrastructure Hearing #1, January 25, 2006.

public schools with $1.9 billion in funding for new school construction project, $3.3 billion for modernization projects, $500 million for charter school facilities, $1 billion for severely overcrowded schools, $500 million for career technical facilities, and $129 million for other projects.

3. Changes in School Facility Funding over Time and Comparisons to other States

As the previous section makes clear, California's system of school facility finance has changed frequently over time. This section documents how the numerous changes to the system, and the cyclical nature of statewide school bond initiatives, have affected the level of school facility funding over time. It also documents how spending on school infrastructure in California compares to the rest of the nation and individual states with similar enrollment growth trends.

Figure 1 documents the historical trend in per-pupil school facility spending in California from 1960 to the present.[37] Spending levels are adjusted for inflation with 2005 as the base year. As the figure makes clear, facility spending has fluctuated quite dramatically over time. From 1960 to 1982, spending per pupil on school facilities declined rather continuously, with brief upswings that correspond to the passage of statewide school bond initiatives. Part of this decline is directly related to changing demographics and a natural pattern of infrastructure finance; i.e., periods of heavy investment in infrastructure reduce the need for further investment for a period of time. For example, the decline in school facility spending that occurred during the 1960's was a natural response to the large investment in school facilities that was made during the "building boom" of the late 1940's and 1950's. Similarly, the decline in spending that occurred during the 1970's was partly due to the decline in student enrollment that occurred over that time period.

Figure 1 also illustrates that California experienced a dramatic decline in facility spending between 1978 and 1984, the period during which Proposition 13 prohibited local school districts from issuing local general obligation bonds. Since 1984, facility spending has risen rather continuously, with brief declines occurring when little or no statewide bond revenue was made available. The rise in spending that occurred during the 1980's was primarily driven by three factors: the rise in student enrollments that began in the early 1980's, the passage of Proposition 46, which reestablished the authority of local school districts to issue general obligation bonds, and the passage of AB 2926 which authorized school districts to levy developer fees. The dramatic rise in facility spending that has occurred since 1996 is primarily due to the passage of large statewide bond initiatives in 1996, 1998, 2002 and

[37] Data on school facility spending over time was obtained from annual school finance records prepared by the California Department of Education. Specifically, data from 1960 to 1986 comes from annual reports on the "Financial Transactions Concerning School Districts in California," while the data from 1987 to 2005 comes from J200 and SACS accounting records prepared by the California Department of Education.

2004, and the passage of Proposition 39 in 2000 which lowered the vote requirement on local general obligation bonds to 55%.

The impact of recent increases in school facility spending is further illustrated in Tables 1 and 2, which document the history of K-12 state and local general obligation bond initiatives in California. Table 1 summarizes the history of statewide school bond initiatives. For each time period listed in column 1, columns 2 through 6 give the number of bond issues proposed, the number of bond issues that passed, the total amount proposed, and the total amount that was ultimately passed measured in both current and constant 2005 dollars.[38] As the table reveals, 26 statewide bond elections have been held in California since 1949 and of those, all but three have been approved by voters. Measured in constant 2005 dollars, these bond issues have collectively made available over $56 billion for school construction and modernization. Of this $56 billion, $33.52 billion, or nearly 60%, was approved by voters since 1996 and $23.3 billion, or approximately 41%, was approved by voters since 2001 and the passage of Propositions 47 and 55.

Table 2 provides the same information as Table 1 for local school bond initiatives. Since 1986, California school districts have held a total of 1,215 local general obligation bond initiatives. Of those, 760, or approximately 63%, have been approved by voters. Measured in constant 2005 dollars, these local initiatives have raised over $51 billion for school construction and modernization projects. Table 2 also makes apparent the impact of Proposition 39 on the passage rate of local school bond initiatives and the amount raised through these initiatives. Between 1996 and 2000, the period just prior to the passage of Proposition 39, approximately 63% of local school bond initiatives were approved by voters. In contrast, between 2001 and 2005, voters approved 80% of the bond issues they were asked to support. The amount raised locally through bond initiatives has also increased dramatically since the passage of Proposition 39. In the five year period just prior to the passage of Proposition 39, voters approved $16.4 billion in local general obligation bonds (measured in constant 2005 dollars) in 282 elections. In the five year period following the passage of the proposition, voters have approved over $28 billion in local G.O. bonds in 285 elections. In fact, approximately 55% of all local bond revenue approved by voters since 1986 has been approved since the passage of Proposition 39.

Although school facility spending has risen dramatically since 1996, it remained below the national average until 2000. Figure 2 compares school facility spending per pupil in California with spending per pupil in the rest of the U.S between 1988 and 2004.[39] Spending levels are adjusted for

[38] Information on statewide school bond initiatives was obtained from the Los Angeles County Law Library's, "Guide to California Ballot Propositions." http://lalaw.lib.ca.us/ballot.html.

[39] Data on K-12 School facility spending in the U.S. comes from the U.S. Department of Commerce, Bureau of the Census, Annual Survey of Local Government Finances. Annual facility spending is measured as the sum of total

inflation, with 2005 as the base year. On average, between 1988 and 1996 California spent about 20% less on school facilities per pupil than the rest of the nation. With the passage of two large statewide bond initiatives in 1996 and 1998, spending per pupil in California began to rise relative to the rest of the nation. Since 2000, and the passage of Propositions 39, 47, and 55, school facility spending in California has risen above the national average.

Table 3 compares school facility spending in California with spending in other states between 1988 and 2004. For each time period listed in column 1, columns 2 through 8 respectively give the average level of facility spending in the U.S. except California, in California, and in five other states with enrollment growth similar to California. All spending levels listed in Table 3 are adjusted for inflation and measured in constant 2005 dollars. As the table reveals, prior to 2001, California consistently spent less per pupil on K-12 school facilities than other states with similar enrollment growth trends.[40] For example, between 1988 and 1992 California spent about $100 less per pupil on school facilities than Texas. Similarly, between 1997 and 2000 it spent about $260 less per pupil than Texas. Between 2001 and 2004, however, spending per pupil on school facilities in California had reached or exceeded the spending levels observed in other states with similar enrollment growth. Nevertheless, despite the recent up-tick in spending, spending per pupil on school facilities over the entire time period still lags behind the level observed in other states. For example, between 1988 and 2004, spending per pupil in California averaged $818 while it averaged $1,172 in Florida and $963 in Texas.

In summary, between 1960 and 1982, spending per pupil on school facilities in California was consistently falling. Although spending per pupil has risen ever since, throughout the 1980's and 1990's it remained below the national average, and even farther below the level found in states with similar enrollment growth trends. Since 1998, spending per pupil in California has increased dramatically so that spending on school facilities in California is now higher than the national average and it is as high, if not slightly higher, than the spending levels observed in states with similar enrollment growth trends. With that in mind, the next section turns to a discussion of California's current system of school facility finance.

4. The Current System of School Facility Finance

California's current system of school facility finance is best described as a partnership between the state and local school districts. The state provides funding for school facility projects via the School Facility Program (SFP), which is subdivided into five major programs: the New Construction Program,

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state and local capital expenditures. Prior to 1988, data on capital outlays by state and local governments for K-12 education were not reported in a consistent manner. As a result, the analysis begins in 1988.

[40] Carroll, et. al. (2005) show that between 1990 and 2000 California also spent less per pupil on school facilities than the four other most populous states, namely, Texas, New York, Florida, and Illinois.

the Modernization Program, the Critically Overcrowded Schools (COS) program, the Joint-Use Projects program, and the Charter School Facilities program. With the exception of the Modernization Program, all these state programs are funded on a 50/50 state and local matching basis. The Modernization Program is funded on a 60/40 state and local matching basis. Local school districts finance their share of school facility projects with funding obtained primarily from two sources: local general obligation bonds and developer fees. Thus, the current system is designed to be a collaboration between the state and local school districts, with each entity providing a portion of the costs associated with any given new construction or modernization project. This section describes the major programs the state uses to fund school facility projects and delineates the various steps school districts must complete to obtain state funding.[41]

Overview of the SFP Program

In order to obtain funding for new school construction and modernization projects, school districts must interact with, and obtain approval from, a number of state agencies. These include the State Allocation Board (SAB), the Office of Public School Construction (OPSC), the Division of the State Architect (DSA) of the Department of General Services, the School Facilities Planning Division (SFPD) of the California Department of Education, the Department of Toxic Substance Control (DTSA), and the Department of Industrial Relations (DIR).

As mentioned previously, the SAB is responsible for approving all state apportionments for new school construction and modernization projects. The board meets monthly to review applications for funding, act on appeals, and implement policies associated with the School Facility Program. The OPSC is the administrative arm of the SAB. Its primary responsibilities include: allocating state funds for projects approved by the SAB, reviewing eligibility and funding applications, and providing information and assistance to school districts. The DSA has been involved in the process of school construction since the Field Act was first passed in 1933. The primary responsibility of the agency is to review and approve construction plans and to ensure those plans are in compliance with the Field Act. DSA approval is required for all new school construction and modernization projects. The primary role of the School Facilities Planning Division (SFPD) is to approve school district site and construction plans. The agency reviews the "educational adequacy" of proposed projects to ensure they meet the needs of students and teachers. The agency also works with the Department of Toxic Substance Control to review any potential environmental hazards associated with a project. The final agency involved in the process is the Department of Industrial Relations (DIR). The primary responsibility of this agency is to ensure that

[41] This section focuses on the New Construction Program, the Modernization Program, the Critically Overcrowded Schools program and the Joint-Use Projects program. Section 8 contains a detailed description of the Charter School Facilities program.

school districts are in compliance with labor laws relating to contractors and employers. Before any funding from the SFP is released to a school district, the district must obtain certification that its Labor Compliance Program has been approved by the DIR.

The School Facility Program provides funding for two major types of school construction projects: new school construction and modernization. The process of obtaining state funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are reviewed by the OPSC and then presented to the SAB at one of their monthly meetings for approval. Upon receiving approval from the SAB, a district may request funding by submitting a funding application to the OPSC. The funding application must include supporting documentation that shows that the district's plans for construction have been approved by the DSA and the SFPD. The completed funding application is reviewed by the OPSC and then submitted to the SAB for a funding apportionment. Funds apportioned by the SAB are released once the district has provided evidence that it has secured funding for required local matching funds (50% of new school construction projects costs and 40% of modernization project costs), and evidence that it has entered into a binding contract for at least 50% of the proposed construction project. Figure 3 illustrates the steps districts must follow to obtain funding for either new school construction or modernization projects.[42]

As noted in the previous section, the SFP was designed to stream-line the application process and simplify the overall structure of the state's school facilities program. According to the Office of Public School Construction (OPSC), most funding applications can now be reviewed and receive final approval from the State Allocation Board within 60 to 90 days. Relative to the old Lease-Purchase Program, the SFP also involves less project oversight by the state and allows districts considerable independence in determining the scope of any new school construction or modernization project. However, this greater independence comes at a potential cost; all state grants are considered to be full and final apportionments by the SAB. Thus, districts are now responsible for any cost overruns or unanticipated costs associated with a project. Under the old Lease-Purchase Program, some of those costs were reimbursed by the state.

Establishing Eligibility

To obtain state funding for new school construction projects, districts must first demonstrate that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment. Districts may establish eligibility on a district-wide basis or, if only some areas within the district are facing capacity constraints, on a High School Attendance Area (HSAA) basis. Establishing eligibility involves three steps. In the first step, form SAB 50-01 is used to compute a five-year enrollment projection based on current and historical enrollment figures. Districts that are

[42] Figure 3 is adopted from a schematic created by Abel et. al. (Winter 2004/2005), p. 11.

experiencing rapid residential growth may supplement these enrollment projections using information on the number of unhoused students that are anticipated as a result of new residential development. To do so, the district must submit to the OPSC either approved or tentative valid tract maps that show the size and density of proposed new developments.[43] In the second step, form SAB 50-02 is used to compute a district's existing capacity based on an inventory of the number of existing classrooms (or space that could be used as a classroom). Pupil capacity is computed by multiplying the number of existing classroom spaces by a load factor of 25 for elementary classrooms, 27 for middle and high school classrooms, 13 for non-severely disabled classrooms, and 9 for severely disabled classrooms. In the third step, form SAB 50-03 is used to determine eligibility. Existing pupil capacity is subtracted from projected enrollment to determine the number (if any) of unhoused students. The number of students computed to be unhoused represents the district's eligibility for new school construction grants.

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

Applying for Funding

New school construction projects are funded by the state on a per-pupil basis. The amount of the grant is determined by multiplying the number of unhoused students (determined in the eligibility phase), by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs.[44] The current grant amounts per unhoused pupil are listed in Table 4. Supplemental grants are also available to fund special project needs. The most common supplemental grants are site acquisition grants and site development grants, which respectively cover costs associated with purchasing a site and preparing a site for construction.[45] Site acquisition and development grants are made on a 50/50 state and local matching basis.

The funding application for new school construction consists of a single form, SAB 50-04. While the form itself is relatively simple, districts must also file with their application a number of supporting

[43] In 2005, the legislature enacted AB 491 which provides districts with an alternative enrollment projection. Districts that do not meet the standard criteria for eligibility may still be eligible for funding if they meet the following two criteria: (1) the district has two or more school sites with a pupil population density greater than 115 pupils per acre for elementary schools and 90 pupils per acre for middle and high schools, and (2) the district can not meet its housing needs at the impacted site after considering all existing eligibility mechanisms.

[44] The SAB uses the Class B construction Cost Index to annually update the per-pupil grants.

[45] Other supplemental grants include: fire code requirements, energy efficiency, special education, multi-level construction, project assistance, replacement with multi-story construction, geographic location, small size projects, new school projects, urban locations. For a detailed description of these supplemental grants see the School Facility Handbook.

documents. These include: (1) an appraisal, escrow closing statement or court order and a CDE site approval letter if the project involves site acquisition, (2) DSA approval of construction plans, (3) CDE approval of final plans, and (4) a set of district certifications that include (among other things) the establishment of a restricted maintenance account,[46] certification that the district will fund its share of the project, and certification that the district's Labor Compliance Program has been approved by the Department of Industrial Relations.

Modernization projects are also funded by the state on a per-pupil basis. The amount of the grant is determined by multiplying the number of students to be housed in a modernized building by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs**.** Table 5 lists the per-pupil grant amounts for modernization projects. The funding application process for modernization projects is very similar to the process for new school construction. The application process consists of a single form, SAB 50-04, and a set of supporting documents that ensure the district has obtained DSA and CDE approval for its construction plans and obtained the requisite certifications. These certifications include: the establishment of a restricted maintenance account, verification that the building to be modernized was not previously modernized under the old Lease-Purchase Program, evidence that the district has obtained funding to meet its required 40% match for project costs, and approval from the DIR for the district's Labor Compliance Program.

Financial Hardship

School districts unable to contribute some or all of the local matching funds required for new school construction and modernization projects may apply to the OPSC for financial hardship status. If financial hardship status is granted, districts can receive up to 100% state funding for eligible new school construction and modernization projects. Districts seeking financial assistance must have their financial hardship status approved prior to submitting an application with the OPSC for funding. To qualify for financial hardship funding, a district must demonstrate the following: (1) it is levying developer fees up to the maximum amount allowed by law; (2) it has made every reasonable effort to raise local revenue to fund a project;[47] and (3) evidence of financial inability to contribute the required local matching funds.[48]

[46] The SFP requires school districts that receive state funding for new construction or modernization projects establish a restricted maintenance account to ensure that projects are kept in good repair. For a period of 20 years, districts are required to deposit no less than three percent of their general fund budget annually into the restricted maintenance account. Small districts may deposit less than three percent into the account if they can demonstrate an ability to maintain their facilities using a smaller amount of money.

[47] Specifically, a district must provide evidence of at least one of the following: existing debt is at least 60% of the district's bonding capacity, total bonding capacity is less than $5 million, or evidence that the district held a successful school bond election in the past two years.

[48] The OPSC conducts an analysis of a district's financial status to determine whether it is eligible for financial hardship status. The process involves a number of worksheets used to determine a district's share (if any) of project costs.

The Critically Overcrowded School Facilities Program

The Critically Overcrowded School (COS) Facilities program was created in 2002 with the passage of AB 16. The program allows districts with critically overcrowded school sites to reserve funding for new school construction projects for a period of up to four years. At the end of the four year period, districts with an approved COS project must convert their COS project into a new school construction project and meet all funding criteria set forth by the SFP's New Construction Program. Unlike the New Construction Program, the COS program allows eligible districts to reserve funding for new school construction prior to having identified a site for the construction and prior to having bid-ready construction plans.[49] Thus, the COS programs gives qualifying districts substantially more time to prepare an application for funding.

To qualify as critically overcrowded, elementary schools must have a student density greater than 115 students per acre while middle and high schools must have a student density greater than 90 students per acre.[50] The California Department of Education is responsible for maintaining a list of critically overcrowded schools. Once a school within a district has been placed on the CDE's critically overcrowded schools list, the district can file an Application for Preliminary Apportionment (a reservation of funds application) with the OPSC. Any project funded under the COS program must meet the following conditions: (1) relieve overcrowding by increasing the capacity of the district, (2) identify a minimum of 75% of the proposed student occupancy for the project as coming from schools listed on the CDE critically overcrowded schools list, and (3) be located within a one-mile radius of an elementary school that qualifies as critically overcrowded or within a three-mile radius of a secondary school that qualifies as critically overcrowded. Figure 4 illustrates the steps qualified districts must follow to obtain funding under the COS program.[51]

Joint-Use Projects

The legislature enacted the Joint-Use Program with the passage of AB 16 in April of 2002. The program was further amended with the passage of SB 15 in 2003. The program allows districts to enter into a cost-sharing agreement for specified projects with a qualified joint-use partner.[52] In so doing, the program allows districts to consider projects that they may not have been able to afford otherwise. One hundred million dollars of Proposition 47 and 55 funding has been made available for the program. The

[49] Abel et. al. (Winter 2004/2005), p. 10.
[50] These densities represent 200% of the CDE standard (recommended site density). Prior to implementing the program, the state legislature considered other density factors such as 150% or 125% of the CDE standard. Of course, the lower the density factor, the higher the number of schools that would qualify for the COS program. PolicyLink and MALDEF (2005) have suggested the density factor be reduced to allow more districts to participate in the COS program. This issue and other issues related the COS program are discussed in section 9.
[51] Figure 2 is taken from a schematic created by Abel et. al. (Winter 2004/2005), p. 10.
[52] Qualified joint-use partners include: governmental agencies, institutions of higher education, and nonprofit organizations.

Joint-Use Program funds two types of projects, commonly referred to as Type I and Type II. Type I joint-use projects must be part of a qualified new construction project that increases the size and/or cost of a project beyond what is necessary for school use of a multipurpose room, a gymnasium, a childcare facility, a library or a teacher education facility. Type II joint-use projects can be part of a modernization project or a stand-alone project that will add or expand a multipurpose room, gymnasium, childcare facility, library, or a teacher education facility.

Funding for joint-use projects is made on a 50/50 state and local matching basis. The joint-use partner is responsible for contributing a minimum of 25% of project costs and thus a local school district is responsible for a maximum of 25% of project costs.[53] Furthermore, if a school district passed a general obligation bond issue for the explicit purpose of building a joint-use project, the district may contribute the full 50% of the required local match. Similar to other programs administered under the SFP, all applications for joint-use projects must be accompanied by supporting documentation that demonstrates the district has received DSA and CDE approval for its construction plans. Apportionments for joint-use projects are made on a first-come first-served basis.

5. The Size and Distribution of School Facility Spending Since 1998

As previously noted, California's current system of school facility finance was established in 1998 with the passage of SB 50. Since that time, revenue from state and local general obligation bond issues, developer fees and several other revenue sources have provided approximately $71 billion for new school construction and renovation projects throughout the state. This section describes the level and distribution of school facility funding in California since 1998.

The Level of School Facility Funding

Table 6 summarizes the total revenue made available to local school districts for new school construction and modernization projects from 1998 to the present. The first column of Table 6 lists five sources of revenue for school facility projects. The second column lists the aggregate revenue raised from each of those sources, while the third column lists the percentage of total revenue derived from each source.[54] As Table 6 reveals, most revenue for new school construction and modernization comes from three sources: local general obligation bonds, state aid and developer fees. Collectively, these three sources of revenue represent 93% of all funding available to school districts.[55] School districts also

[53] Unlike other SFP programs, financial hardship assistance is not available for joint-use projects. If a district is unable to fund some portion of its share of project costs, the state apportionment is reduced.

[54] All revenue figures reported in Table 6 are adjusted for inflation using the producer price index and measured in constant 2005 dollars.

[55] Information on the revenue raised through successful local general obligation bond elections was obtained from EdSource and represents all revenue raised from 1998 through June 2006. Information on state apportionments to

receive revenue from successful Mello-Roos and School Facility Improvement District elections (approximately 1% of total funding) and from various "other" revenue sources (approximately 6% of total funding). These "other" sources include: Certificates of Participation (COP's) which represent short-term debt, revenue from the sale or lease of land and/or buildings, federal aid, and other smaller sources of revenue.[56] Between 1998 and June of 2006 school districts raised $38.4 billion for new school construction and modernization projects through local general obligation bond issues. Over the same time period, the state apportioned $21.9 billion to local school districts. That amount represents nearly all of the revenue from Proposition 1A and Proposition 47 and approximately 56% of the revenue from Proposition 55.

Two other studies examined the composition of revenue for new school construction and renovation projects in California during the period just prior to the passage of SB 50. A comparison of the results reported in those studies with the results reported in Table 6 suggests that since 1998, local school districts have relied more heavily on local general obligation bonds to finance school construction and modernization projects. Specifically, Brunner and Rueben (2001) examined the composition of revenue for new school construction and modernization between 1992 and 1998. Over that time period, local general obligation bonds constituted approximately 32% of total facility funding, state aid constituted approximately 30% and developer fees constituted approximately 11%. Similarly, the Legislative Analyst's Office (2001) examined the composition of revenue between 1987 and 1998 and found that local general bonds constituted about 32% of total funding, while state aid and developer fees respectively constituted about 40% and 17%. Thus, in recent years, the share of revenue coming from local general obligation bonds has risen from approximately 32% to 53%. This increased reliance on G.O. bond revenue is most likely attributable to the passage of Proposition 39 in November of 2000.

Table 7 summarizes the three largest sources of revenue in terms of average revenue per pupil. The per-pupil revenue figures reported in the table represent the sum of all revenue raised between 1998 and the present (measured in constant 2005 dollars) divided by the average enrollment over the time period. Local general obligation bond revenue averaged $4,051 in unified districts, $3,293 in elementary districts, and $6,951 in high school districts. Furthermore, these averages mask considerable variation in the number of districts that held a successful G.O. bond election and the amount of revenue raised by those school districts that held a successful election. For example, 57% of unified school districts (188

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school districts was obtained from the Office of Public School Construction and represents all apportionments made from 1998 through June 2006 (the data of the last SAB meeting). Finally, information on developer fee revenue was obtained from yearly school district accounting records (J-200 and SACS) provided by the California Department of Education and represents all revenue raised from 1998-99 through 2004-05.

[56] Information on successful Mello-Roos and SFID elections was obtained from EdSource while information on "other" sources of revenue was obtained from yearly school district accounting records prepared by the California Department of Education.

out of 331) held at least one successful G.O. bond election over the time period and among those districts the average amount raised per pupil was $7,134. Similarly, 30% (166 out of 548) of elementary districts and 58% (48 out of 83) of high school districts held a successful G.O. bond election over the time period and among those districts the average amount raised was $10,872 for elementary districts and $12,019 for high school districts. One district in particular stands out, namely Los Angeles Unified. Between 2002 and 2005, voters in LA Unified approved $11.2 billion in local general obligation bonds or, on a per-pupil basis, $15,114. Overall, local G.O. bond revenue constitutes 42% of total per-pupil funding for unified districts, 40% for elementary districts and 50% for high school districts. Similarly, state aid constitutes 36% of total funding for unified districts, 42% for elementary districts and 34% for high school districts.

The Distribution of School Facility Funding

The averages reported in Table 7 mask wide variations in the distribution of school facility funding across districts. Table 8 illustrates how per-pupil revenue for new school construction and modernization is distributed across school districts. The percentiles listed in the table are weighted by the number of students in each district. For example, 10% of students in unified school districts were enrolled in a district where total revenue per pupil was less than $4,274. For each type of school district, the first row gives the distribution of local general obligation bond revenue per pupil. The second row shows how the distribution changes when state aid per pupil is added to local G.O. bond revenue. Finally, the third row shows the distribution of total revenue per pupil (local G.O. bond revenue plus state aid plus all other sources of revenue). For all three types of school districts, total revenue per pupil at the 75th percentile is more than double that of the 25th percentile. These large disparities are partly due to the distribution of local general obligation bond revenue across districts. For example, in unified school districts, local G.O. bond revenue at the 75th percentile is more than seven times that of the 25th percentile. These large disparities in local bond revenue per pupil are partially offset by state aid and other sources of revenue but large disparities persist across districts.

Of course, part of this variation in school facility funding across districts may simply reflect differences in need. For example, student enrollment might be increasing rapidly in some districts and declining or remaining stable in others. Similarly, some districts might have invested heavily in new school construction and modernization in the period just prior to 1998 and thus have little need for further investment in school facilities. On the other hand, the variation in school facility funding across districts might also reflect differences in the ability to fund new school facility projects. High-income districts and districts with high property wealth, for example, might be more willing and able to finance new school construction and modernization projects. The next section addresses these possibilities by examining how variation in school facility funding is related to measures of need and measures of ability to pay.

6. Explaining the Variation in School Facility Funding

The need for school facility funding arises primarily for two reasons: (1) capacity constraints due to enrollment growth and (2) modernization/renovation needs due to the aging of the existing capital stock. Consequently, this section begins by examining how variation in school facility funding across districts is related to enrollment growth and prior investment in school infrastructure.

Need and the Distribution of School Facility Funding

Table 9 illustrates how per-pupil facility funding is related to the growth rate of district enrollment between 1998-99 and 2004-05. For each type of school district, the table shows how revenue per pupil is distributed when school districts are separated into quintiles of enrollment growth.[57] The quintiles listed in the table are weighted by student enrollment so that each quintile contains 20% of the total student enrollment in the state. For example, 20% of students in unified school districts were enrolled in a district where enrollment growth was less than 0.8% (the first quintile). Similarly, 20% of students in unified districts were enrolled in a district where enrollment growth was greater than 18% (the fifth quintile).

As Table 9 reveals, school facility funding appears to be positively related to enrollment growth. In unified districts, total revenue per pupil averaged $7,960 among districts in the first quintile of enrollment growth while it average $14,725 among districts in the fifth quintile. Elementary and high school districts with the highest enrollment growth rates also tend to have higher total revenue per pupil. Table 9 also reveals that the distribution of total revenue per pupil is primarily driven by the distribution of state aid. For each type of school district, state G.O. bond apportionments increase steadily across the quintiles of enrollment growth. Of course the strong positive relationship between enrollment growth and state aid is to be expected, given that funding for new school construction is based primarily on current and projected enrollment growth. What is slightly more surprising is the relationship between local general obligation bond revenue and enrollment growth. One would expect local G.O. bond revenue to be positively related to enrollment growth as districts with high enrollment growth rates should have greater need for school facility funding. However, Table 9 reveals that local G.O. bond revenue is only weakly related to enrollment growth. In particular, among unified and elementary districts there appears to be no systematic relationship between local bond revenue per pupil and enrollment growth. Districts in the first quintile of enrollment growth raise about the same amount of revenue through local G.O. bond

[57] For the remainder of this study per-pupil revenue is measured as the sum of all revenue raised between 1998 and the present (measured in constant 2005 dollars) divided by the average enrollment over the time period.

elections as districts in the fifth quintile.[58] Among high school districts, there is a large difference in local bond revenue between the first and second quintiles of enrollment growth but little difference in revenue between the remaining quintiles.

Table 10 illustrates how revenue per pupil is related to an alternative measure of need, namely the amount districts spent in previous years on school construction and modernization projects. For each type of district, the table shows how revenue per pupil is distributed across school districts when districts are separated into quintiles of previous investment in school facilities. The quintiles are once again weighted by student enrollment. Previous school facility investment is measured as the sum of all school facility spending within a district from 1969 to 1997, adjusted for depreciation. Specifically, for each school district, the aggregate value of school facility investment over the 29 year period spanning 1969 to 1997 was calculated as:

$$K_{1998} = \sum_{j=0}^{28} I_j \cdot (1-\delta)^{28-j} ,$$

where K_{1998} denotes the aggregate value of school facility investment as of 1998, I_j denotes school facility investment in year *j* (1969, 1970 …, 1997), measured in constant 2005 dollars, and δ is the geometric rate of depreciation.[59] Data on aggregate investment for various years were obtained from the *Annual Report of Financial Transactions Concerning School Districts of California*, prepared by the California State Controller. The nominal investment data were converted into constant 2005 dollars using the producer price index.[60]

As Table 10 illustrates, among unified districts there appears to be no systematic relationship between prior investment in school facilities and current facility revenue per pupil. Local G.O. bond revenue, state aid and total revenue per pupil are relatively evenly distributed across quintiles.[61] In contrast, among elementary and high school districts there appears to be a negative relationship between

[58] The relatively large spike in the 3rd quintile of local G.O. bond revenue for unified districts is driven by Los Angeles Unified which makes up the bulk of that quintile. Excluding Los Angeles Unified from the analysis causes local G.O. bond revenue in the 3rd quintile too fall to levels similar to other quintiles.

[59] Holtz-Eakin (1993) reports an estimate of the depreciation rate of non-residential state and local capital of 4.1%. I use his depreciation rate to calculate the aggregate value of school facility investment in prior years.

[60] Between 1969 and 1998, a substantial number of California's elementary and high school districts were consolidated into unified districts. For those school districts, I used school district consolidation records, obtained from the California Department of Education, to identify the elementary schools and high schools that merged to form a new unified school district. For the years prior to the formation of a unified school district, I measured total capital outlay for that school district as the sum of all capital outlays made by the elementary and high school districts that eventually consolidated to form the unified district. Using that procedure I was able to obtain a complete time series of annual investment flows for all school districts currently operating in California.

[61] Los Angeles Unified falls in the 2nd quintile. Omitting Los Angeles Unified from the analysis does not affect the pattern of results reported in Table 10.

prior investment and total revenue per pupil. For example, total revenue per pupil averaged $9,941 among elementary districts located in the first quintile (the lowest quintile of prior investment) while it averaged only $6,579 among districts located in the fifth quintile (the highest quintile of prior investment). Similarly, local bond revenue averaged $4,656 among elementary districts located in the first quintile while it averaged only $2,467 among districts in the fifth quintile. High school districts exhibit a similar pattern, with districts in the first quintile of previous investment having substantially higher local bond revenue and total revenue than districts in the fifth quintile.[62]

Collectively, Tables 9 and 10 suggest that at least part of the variation in school facility funding across districts can be explained by differences in need: in general, districts with higher enrollment growth rates and districts with lower levels of prior investment in school facilities tend to have higher revenue per pupil. Nevertheless, given the large disparities in school facility funding reported in Table 8, it seems likely that other factors are also driving the distribution of funding across districts. The next part of this section therefore focuses on examining how the distribution of school facility funding is related to measures of ability to pay for new school construction and modernization projects.

Ability to Pay and the Distribution of School Facility Funding

Table 11 shows the distribution of revenue per pupil when districts are separated based on quintiles of median household income.[63] The quintiles are once again weighted by student enrollment. As Table 11 reveals, there appears to be a relatively strong positive relationship between median household income and revenue per pupil: districts with the highest median household income tend to have substantially higher revenue per pupil.[64] For all three types of school districts, total revenue per pupil among districts in the fifth quintile is double that of districts in the first quintile. For example, total revenue per pupil averaged $10,196 among high school districts in the lowest quintile of income while it averaged $24,186 among districts in the highest quintile of income. The distribution of total revenue per pupil in Table 11 is primarily driven by the distribution of local bond revenue. In particular, local G.O. bond revenue appears to increase rather continuously with district income. Furthermore, compared to districts in the first through fourth quintiles, districts in the fifth quintile (those districts with the highest median income) appear to raise substantially more revenue through local G.O. bond elections.

[62] I also examined the sensitivity of these results to the time span chosen to measure prior investment expenditures. In particular, I also created a measure of prior investment that only included investment from 1986 (when local general obligation bonds were reinstated) to 1998. Using this alternative measure of prior investment I obtained results that were qualitatively similar to those reported in Table 10.

[63] Data on the median household income of districts comes from special school district tabulations of the 2000 census prepared by the U.S. Census Bureau and the National Center for Education Statistics.

[64] Los Angeles Unified falls in the 1st quintile. Omitting Los Angeles Unified from the analysis does not affect the pattern of results reported in Table 11.

Table 11 provides another explanation for the large disparities in school facility funding across districts, namely a willingness among high-income districts to spend more on school facilities than low-income districts. In particular, high-income districts tend to have higher total revenue per pupil primarily because they tend to raise more money through local general obligation bond elections than low-income districts. However, income is only one of the factors that affects the willingness and ability of districts to fund new school construction and modernization projects. The other primary factor is district property wealth.

As noted in section 2, the passage of Proposition 46 in 1986 reinstated the authority of school districts to issue general obligation bonds, subject to the approval of voters within a district. General obligation bonds are repaid with revenue raised from property tax overrides that remain in effect until the bonds are fully repaid. The reliance upon the local property tax to finance general obligation bonds leads naturally to the question of how differences across districts in assessed value per pupil affect the ability and willingness of districts to finance school facility spending locally. Specifically, property wealth affects the ability of school districts to raise revenue through local general obligation bond elections in two distinct ways. First, school districts can only issue bonds up to their debt capacity limit, which is set at 1.25 percent of assessed value for elementary and secondary districts and 2.5 percent for unified school districts. Thus, debt limits may place an institutional constraint on the amount of bond revenue low-assessed value districts can raise. While debt capacity limits may not be binding for unified and high school districts, which tend to have relatively high limits, an analysis by the Coalition for Adequate School Housing (CASH) suggests that these debt capacity limits may significantly constrain the ability of many elementary districts from raising funds through general obligation bond issues (CASH 1997). Second, differences across districts in assessed value per pupil directly affect the tax-price of school facility spending. The tax-price is the additional property tax burden a homeowner faces when spending per pupil is increased by one dollar. That tax-price equals the assessed value of a voter's home divided by the district's total assessed value per pupil. Note that the tax-price of school facility spending is inversely related to the assessed value of property within a district. Thus, all else equal, districts with higher assessed value per pupil face a lower tax-price which may manifest itself in a higher demand for school facility spending.[65]

[65] Note that the tax-price of school spending may differ across school districts for other reasons as well. First, holding the assessed value of property within districts constant, districts with lower enrollments will have a higher assessed value per pupil and thus face a lower tax-price. Second, all else equal, residents in districts with a higher percentage of nonresidential property will face a lower tax-price since some of the additional tax burden necessary to finance an increase in facility spending is shifted to the owners of nonresidential property.

Table 12 documents the relationship between school facility funding and assessed value per pupil.[66] For each type of school district, the table shows how revenue per pupil varies when school districts are separated into quintiles of assessed value per pupil. Once again, these quintiles are weighted by student enrollment. As Table 12 reveals, there appears to be a strong positive relationship between local bond revenue per pupil and assessed value per pupil.[67] Compared to districts in the lowest quintile of assessed value per pupil, districts in the highest quintile have substantially higher local bond revenue. In unified and high school districts it is more than three times higher and in elementary school districts is more than ten times higher.

Table 12 also reveals a strong positive relationship between assessed value per pupil and total revenue per pupil. Total revenue per pupil averaged $6,889 among unified districts in the first quintile while it averaged $13,507 among districts in the fifth quintile. Similar disparities in total revenue per pupil across quintiles exist for elementary and high school districts. The wide variation in total revenue per pupil across districts is directly related to the variation in local bond revenue. For example, in unified districts, the $4,482 difference in average local G.O. bond revenue between the first and fifth quintiles explains approximately 68% of the difference in total revenue. In elementary and high school districts, differences in local bond revenue across quintiles account for an even greater proportion of the difference in total revenue.

Finally, it is worthwhile to note that the averages reported in Table 12 mask considerable variation across quintiles in the amount of revenue raised by school districts that held successful general obligation bond elections. For example, of the 79 unified districts with assessed value per pupil of $337,000 or less (those in the first quintile), 40 held a successful bond election and among those districts bond revenue per pupil averaged just $4,002 per pupil. In contrast, among the 78 unified districts with assessed value per pupil of $800,000 or more, 45 held a successful bond election and among those districts bond revenue per pupil averaged $11,328. The relationship between assessed value per pupil and local bond revenue per pupil is illustrated more clearly in Figure 5. The vertical axis gives local G.O. bond revenue per pupil for those districts that held a successful local bond election between 1998 and June of 2006, while the horizontal axis gives the assessed value per pupil in those districts. Figure 5 illustrates a strong positive relationship between assessed value per pupil and local bond revenue per

[66] To my knowledge, no state agency collects information on the assessed value of property within school districts. Consequently, I contacted the Auditor Controller's office of each county in California and requested the data. Fifty out of 58 counties responded to my request and provided data on assessed value by school district for the 2005-06 tax year. With the exception of San Joaquin County, all of the counties that did not respond were small rural counties. As a result, while the data on assessed value covers only 50 out of California's 58 counties, it covers 95% of all school districts and 97.5% of all students.

[67] Los Angeles Unified falls in the 3rd quintile. The results reported in Table 12 are essentially unchanged if Los Angeles Unified is omitted from the analysis.

pupil. Furthermore, as Table 13 reveals, this strong positive relationship between assessed value and local bond revenue translates directly into a strong positive relationship between assessed value and total revenue per pupil.

Table 13 examines how school facility funding is related to one final measure of interest to policy makers, namely the percentage of students that are nonwhite. Specifically, Table 13 shows how revenue per pupil is distributed across school districts when districts are separated into quintiles based on the percentage of nonwhite students.[68] In contrast to the results reported in Tables 11 and 12, there appears to be no systematic relationship between revenue per pupil and the percentage of nonwhite students. For all three types of school districts, local bond revenue, state aid, and total revenue per pupil are all rather equally distributed across quintiles.[69]

Taken together, Tables 9 through 12 and Figure 5 suggest that disparities in school facility funding across districts are related to both measures of need, such as enrollment growth and prior facility investment, and measures of willingness and ability pay, such as income and assessed value per pupil. To determine which factors are most important in explaining the level of school facility funding, the remainder of this section turns to multivariate regression analysis.

Regression Results

Column one of Table 14 reports coefficient estimates from a model designed to explain total revenue per pupil. The dependent variable is the log of total facility funding per pupil over the period 1998 to the present. The primary independent variables are: the log of assessed value per pupil, the log of median household income, the growth rate of enrollment between 1998 and 2005, the log of previous facility investment expenditures per pupil, and the fraction of students that are nonwhite in a district. The model also includes the log of district enrollment to account for economies of scale and size effects on the level of school facility funding and two indicator variables: one that takes the value of unity if a district is an elementary district and the other that takes the value of unity if a district is a high school district. These final two variables are included in the model to allow the level of school facility funding to differ across types of districts.

The coefficient estimates reported in column one of Table 14 are generally consistent with expectations. For example, the estimated coefficients on the log of assessed value per pupil and enrollment growth are both positive and statistically significant at the 5% level. Similarly, the coefficient on previous investment is negative and statistically significant, indicating that districts that invested

[68] Data on the ethnic composition of school districts in 2004-05 comes from reports prepared by the California Department of Education. The quintiles reported in Table 13 are weighted by district enrollment.
[69] Los Angeles Unified is located in the 4th quintile. Omitting Los Angeles Unified from the analysis causes local G.O. bond revenue in the 4th quintile to fall considerably from $4,644 to $2,862.

heavily in the past in school facilities tend to receive lower facility funding. Furthermore, consistent with the results reported in Table 11, the fraction of minority students in a district appears to have little effect on the level of school facility funding. Turning to the interpretation of the estimated coefficients, the results indicate that a 1% increase in assessed value per pupil results in approximately a 0.56% increase in total revenue per pupil while a 1% increase in enrollment growth results in approximately a 0.76% increase in total revenue per pupil. District size also appears to have a large effect on revenue per pupil. Specifically, the results indicate that a 1% increase in district enrollment leads to approximately a 0.53% increase in total revenue per pupil. Of course, the enrollment variable most likely captures the fact that elementary districts, which tend to be much smaller, also tend to receive lower funding per pupil.

The second column of Table 14 reports coefficient estimates from a model designed to explain local G.O. bond revenue per pupil. The dependent variable in the model is the log of local bond revenue per pupil. The independent variables are the same variables used to explain total revenue per pupil. Districts that failed to raise any revenue through local bond elections are excluded from the sample. As a result, the sample size falls from 904 observations to 386 (the number of districts that held a successful bond election between 1998 and June of 2006). In column 2, the estimated coefficients on the log of assessed value per pupil and the log of median household income are both positive and statistically significant. Thus, the results indicate that high-wealth and high-income districts tend to raise more revenue through local bond elections. The estimated coefficient on the log of assessed value per pupil is also quite large. Specifically, the results indicate that a 1% increase in assessed value per pupil leads to approximately a 0.77% increase in bond revenue per pupil. In fact, assessed value per pupil is responsible for explaining most of the variation in local bond revenue. Specifically, a simple regression of the log of local bond revenue per pupil on the log of assessed value per pupil yields an R-Squared of 0.52, indicating that 52% of the variation in local bond revenue is explained by this variable alone. Furthermore, as seen by the R-Squared reported in column 2, adding all the other explanatory variables to the model only increases the R-Squared from 0.52 to 0.57. Several of the other coefficients reported in column 2 are also of interest. For example, the coefficient on percent minority is positive and statistically significant indicating that districts with higher fractions of minority students tend to raise more money through local G.O. bond elections. Similarly, the coefficient on enrollment growth is positive and statistically significant at the 10% level. Note, however, that the magnitude of the estimate coefficient on enrollment growth is small. Thus, consistent with the results reported in Table 9, bond revenue per pupil appears to be only weakly related to enrollment growth.

The final column of Table 14 reports coefficient estimates from a model designed to explain the probability of having a successful local G.O. bond election. In this model, the dependent variable is an indicator variable that takes the value of unity if a district had a successful bond election between 1998

and June of 2006 and zero if it did not. Once again, the independent variables are the same as those used in columns 1 and 2. The model is estimated as a logistic regression. The coefficient on assessed value per pupil is positive and statistically significant indicating that districts with higher assessed value per pupil are more like to hold a successful G.O. bond election. The results also indicate that larger districts and those with a higher percentage of minority students are more likely to hold a successful bond election. In contrast, districts that invested heavily in the past in school infrastructure are less likely to hold a successful bond election. Finally, relative to unified and high school districts, elementary districts are significantly less likely to hold a successful bond election.

The results reported in Table 14 reveal several interesting patterns. First, total revenue per pupil is positively related to assessed value per pupil primarily because assessed value per pupil is the primary determinant of local G.O. bond revenue. Specifically, assessed value per pupil drives both the level of bond revenue raised (conditional on having a successful bond election), and the probability of having a successful bond election. Second, while there is only a weak positive relationship between enrollment growth and local bond revenue per pupil, there is a much stronger positive relationship between total revenue per pupil and enrollment growth. As Table 9 illustrated, this strong positive relationship between total revenue and enrollment growth is driven primarily by the distribution of state aid. Finally, conditional on other factors, there is only a weak positive relationship between total revenue per pupil and district income. High-income districts tend to have higher total revenue per pupil primarily because they raise more revenue through local G.O. bond elections.

To more clearly see how assessed value per pupil, enrollment growth and other factors affect the distribution of total revenue per pupil, Table 15 presents the predicted level of total facility funding per pupil calculated using the coefficient estimates reported in column 1 of Table 14. Specifically, Table 15 shows how moving from the 25th percentile of a given variable to the 75th percentile of that variable affects the level of total facility funding per pupil while holding all other variables at their means. For example, if enrollment growth increased from -8% (the 25th percentile of enrollment growth) to 15% (the 75th percentile) total revenue per pupil would increase from $3,144 to $3,741, or by $597. Similarly, if a district's assessed value changed from $392,052 to 1,130,002 total revenue per pupil would increase by $2,064. As Table 15 reveals, both measures of need and measures of ability to pay appear to be important determinants of the distribution of facility funding across districts. Measures of need such as enrollment growth and previous investment in school facilities have relatively large effects on the distribution of facility funding. In terms of ability to pay, assessed value per pupil appears to play the dominant role in explaining the distribution of facility funding across districts.

To examine the robustness of the results reported in Table 14, I also estimated models based on several alternative specifications. To examine whether the results were sensitive to regional variation in

the demand for school facility spending, I first estimated models that included a set of 11 regional fixed effects. These regional fixed effects control for any unobserved regional variation in the demand for school facility spending. The regions consist of contiguous counties and are described in detail by Betts, Reuben and Danenberg (2000). The inclusion of these regional fixed effects caused the coefficient on assessed value to rise slightly in the total revenue equation and in the probability of holding a successful bond election equation. In general, however, results based on models that included regional fixed effects were qualitatively and quantitatively similar to those reported in Table 14. I also estimated separate regression models for each type of school district (unified, elementary and high school). Results based on those alternative specifications are reported in Tables 1A, 2A, and 3A of the Appendix. Specifically, Table 1A reports results when the total revenue equation is estimated separately for each type of district. Similarly, Tables 2A and 3A report results when the bond revenue equation and the probability of having a successful bond election equation are estimated separately for each type of school district. A brief inspection of the results reported in those tables reveals several interesting patterns. First, for unified and elementary districts, the coefficients on assessed value per pupil reported in Tables 1A, 2A, and 3A are quite similar to those reported in Table 14, suggesting that assessed value has a similar effect on both types of districts. In contrast, for high school districts, the coefficient on assessed value per pupil is statistically insignificant in both the total revenue equation and the probability of having a successful bond election equation, suggesting that assessed value plays a less important role in those districts. However, given the small sample size for high school districts, those results should be interpreted with caution. Table 1A also suggests that income tends to play a more important role in explaining variation in total revenue per pupil across elementary and high school districts, and that enrollment growth tends to play the most important role in explaining variation in total revenue per pupil across high school districts.

7. Critically Overcrowded and Multi-Track Year-Round Schools

The previous section demonstrated that districts with higher enrollment growth and/or lower levels of previous investment in school facilities tend to receive higher levels of facility funding. Thus, districts with greater facility needs appear to receive higher levels of facility funding. On the other hand, it also appears that ability to pay has a relatively large impact on facility funding. Districts with high assessed value per pupil tend to have significantly higher levels of school facility funding. These results raise an important question: do districts with the most critical facility needs receive higher levels of facility funding? While quantifying facility needs is difficult, there are two objective measures of need that can be examined: schools that the California Department of Education (CDE) classifies as critically overcrowded and schools that operate on a multi-track year-round calendar. This section examines how the characteristics of critically overcrowded and multi-track schools differ from other schools. It also

examines how school facility funding in districts that contain critically overcrowded and multi-track schools compares to other districts.

As noted previously, the CDE classifies a school as critically overcrowded if it has a student density that is 200% or more of the CDE's recommended density. For elementary schools, that translates into a density of more than 115 students per acre while for middle and high schools it translates into a density of more than 90 students per acre. The multi-track year-round calendar was introduced in California to help alleviate overcrowding. Multi-track year-round calendars allow schools to increase their seating capacity by 30% or more, by placing students into tracks and then rotating those tracks throughout the year. Thus, at any given point in time, one track is on vacation while the other tracks are attending classes.[70] Currently, approximately 804,000 students attend one of the 751 schools operating on a multi-track year round calendar.[71] Districts that choose to implement a multi-track calendar are eligible for additional operational funding to compensate for the multi-tracking of students. Specifically, the Year Round Grant Program, administered by the State Department of Education, provides additional funding to districts that implement or maintain a year-round multi-track program. Funding is based on the percentage of pupils certified in excess of facility capacity. The amount of the grant increases with the percent of students housed in excess of facility capacity. For example, if 5 to 9 percent of students are housed in excess of facility capacity the maximum grant amount is $824.50 per student in excess of capacity. If 20 to 24 percent of students are housed in excess of facility capacity the maximum grant amount is $1,401.65 per student in excess of capacity.[72] Districts that receive funding under the Year Round Grant program have their new construction eligibility in the SFP program reduced based on the number of pupils for whom they have received funding. Thus, school districts that participate in the program are voluntarily choosing to reduce their eligibility for new school construction funding.

Table 16 shows the percent of students in California that attend critically overcrowded or multi-track schools as of 2004-05.[73] Overall, approximately 16% of students are enrolled in a school that the CDE defines as critically overcrowded, while 22% of students are enrolled in a school that is either critically overcrowded or utilizes a multi-track year-round calendar.[74] As Table 16 reveals, a disproportionate number of nonwhite and low-income students attend critically overcrowded or multi-track schools. For example, while overall 16% of students attend critically overcrowded schools, only 5%

[70] See Oakes (2002) for an excellent discussion of multi-track year-round schooling.
[71] Assembly Education Committee, Education Infrastructure Hearing #1, January 25, 2006.
[72] There grant amount are as of 2005-06. See the California Department of Education website for the latest grant amounts under the Year Round Grant Program.
[73] Table 16 is an update of a table created by Pastor and Reed (2005) who use data from 2002-03.
[74] These calculations were made using data from the California Department of Education on school-level enrollment in 2004-05 and the CDE's list of critically overcrowded schools and schools that operate on a multi-track year-round calendar.

of White students attend such schools while 22% of African American and 23% of Hispanic students attend these schools. Furthermore, as the last two columns of Table 16 reveal, in Los Angeles Unified nearly 80% of all students attend a critically overcrowded or multi-track school. However, unlike other school districts, critically overcrowded schools in Los Angeles Unified do not appear to enroll a disproportionate number of African American students. Specifically, while overall 78% of students in Los Angeles Unified are enrollment in a critically overcrowded school, only 70% of African American students attend such a school.

Table 17 provides the same information as Table 16 in a slightly different manner. It shows how the characteristics of critically overcrowded and multi-track schools differ from other schools. For example, in the average critically overcrowded or multi-track school, approximately 73.2% of students are eligible for free or reduced price lunch. In all other schools, that percentage is only 45.2. Overall, Table 17 reveals that critically overcrowded and multi-track schools contain much higher percentages of poor and minority students and much lower percentages of white students.

Table 18 compares the level of school facility funding among districts that contain critically overcrowded or multi-track schools to the level of funding in other districts. Facility funding is expressed in per-pupil terms and is measured as the sum of all revenue raised between 1998 and the present divided by average enrollment over the time period. Compared to districts that contain no critically overcrowded or multi-track schools, those that do, tend to have higher revenue per pupil. For example, total revenue per pupil averaged $11,323 among the 46 districts that contained critically overcrowded schools and $10,459 among the 107 districts that contained either critically overcrowded or multi-track schools. In comparison, total revenue per pupil averaged $9,061 among the remaining 855 districts. Table 18 also illustrates that districts with critically overcrowded and multi-track schools tend to have higher local bond revenue per pupil and higher state aid per pupil.

While total revenue per pupil tends to be higher in districts with critically overcrowded schools, it is much higher in Los Angeles Unified, which contains nearly 50% of all schools on the CDE's critically overcrowded school list. For example, total revenue per pupil in Los Angeles Unified is nearly twice the level of other districts with critically overcrowded schools and more than twice the level of districts with no critically overcrowded or multi-track schools. Similarly, local bond revenue in Los Angeles Unified is nearly three times that of other districts with critically overcrowded or multi-track schools and more than four times that of all other districts.

While local bond revenue and total revenue tend to be higher in Los Angeles Unified, state aid tends to be lower. Between 1998 and June of 2006, Los Angeles Unified received $2,860 per-pupil in state aid. In contrast, state aid averaged $4,133 among all districts with critically overcrowded or multi-track schools and $3,495 among all other districts. Recall, however, that state aid represents state funding

that has been *apportioned* to school districts for new school construction and modernization projects. When the state implemented the COS program in 2002, it allowed districts with critically overcrowded schools to reserve funding for up to five years (four years plus a possible one-year extension). As a result, a substantial proportion of the funding allocated to the COS program may not have been apportioned to school districts as of June of 2006.

The fourth row of Table 18 attempts to quantify how much additional state aid districts with critically overcrowded schools are likely to receive once they turn their preliminary (reserved) COS apportionments into actual apportionments. Specifically, the fourth row shows the per-pupil *preliminary* COS apportionments from Proposition 47 and 55. On average, districts with critically overcrowded schools stand to receive an additional $531 per pupil in state aid once they convert their preliminary apportionments. Furthermore, funding for the COS program is not equally distributed across all districts: while Los Angeles Unified contains approximately 50% of all critically overcrowded schools, approximately 75% of all COS program funding has been reserved for Los Angeles Unified.[75] That amounts to approximately $3,761 per pupil in additional state aid for Los Angeles Unified alone. Thus, once one considers both actual state apportionments and preliminary state apportionments for the COS program, state aid in Los Angeles Unified is substantially higher than in other districts.

8. Charter School Facility Funding

Sections 2 through 7 documented facility funding for traditional K-12 public schools in California. This section provides an overview of charter school facility funding. Charter schools face unique facility challenges for several reasons. First, unlike public school districts, charter schools can not, by themselves, issue local general obligation bonds to finance their school facility needs. Second, a majority of charter schools in California are start-ups that do not have direct access to public school facilities. Many of these start-up schools obtain facilities by leasing or renting space in office buildings and other commercial sites. For example, a survey conducted by the Rand Corporation in 2002 found that approximately 40% of start-up charter schools leased space from commercial sites, while 24% obtained facilities by either purchasing or renting a privately owned facility.[76] These schools incur leasing and rental expenses that traditional K-12 public schools do not. Third, because lending institutions view charter schools as high-risk investments, many charter schools have found it difficult to obtain the loans necessary to finance school facilities.[77] These unique facility issues have led some researchers to conclude that, "an inadequate supply of school facilities may be the single largest stumbling block to the

[75] District-level data on preliminary apportionments for the Critically Overcrowded School Program was obtained from the Office of Public School Construction.
[76] Krop and Zimmer (2005), p. 19.
[77] EdSource (2004), p. 23.

growth of charter schools."[78] This section begins by providing an overview of the challenges faced by charter schools in obtaining school facilities. It then goes on to discuss how recent legislation and several court cases have affected the ability of charter schools to obtain adequate facilities. It ends by discussing charter school facility funding options that have recently become available.

The first charter schools were established in California in 1993 after the state legislature enacted SB 1448, the Charter Schools Act of 1992. Among other things, the Act capped the number of charter schools in the state at 100 (with no more than 10 charter schools in any single district) and prohibited private schools from being converted into charter schools. While the Act provided significant detail on the financing of current operating expenditures for charter schools it made no mention of charter school facility issues. The failure of the original legislation to address charter school facility needs stems partly from an underlying belief among its framers that charter schools would be "conversions" and utilize district facilities.[79] However, as early as 1995, nearly 50% of charter schools were start-ups with no access to existing school facilities.[80] As mentioned previously, these start-ups typically faced significant facility challenges due to rental and leasing costs and difficulties in obtaining loans to secure facilities. Furthermore, many school districts were experiencing facility shortages in the 1990's making it difficult for them to find adequate housing for conversion charter schools. The facility problem facing charter schools became more severe when the state legislature expanded the cap on charter schools in 1998. Specifically, AB 544 increased the statewide cap on charter schools to 250 for the 1998-99 school year, and allowed the state to approve an additional 100 schools every year thereafter. Between 1993 and 2000, the number of charter schools expanded from 15 to 165 and by 2005 there were 502 charter schools operating in California. These 502 charter schools enrolled approximately 180,000 students or 3% of California's total K-12 public school student population. As the number of charter schools increased, so did the facility problems facing those schools. According to the 2002 survey of charter schools conducted by the Rand Corporation, 62% of all charter schools surveyed stated they were struggling to finance their school facility needs.

The Ramifications of Proposition 39 for Charter Schools

The facility picture for charter schools changed considerably following the passage of Proposition 39 in November of 2000. In addition to reducing the vote requirement on local G.O. bonds from two-thirds to 55%, the proposition also required that, "each school district make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the

[78] Sugarman (2002), p. 6.
[79] EdSource (2004), p. 20.
[80] See Krop and Zimmer (2005) for a historical account of the number of start-up and conversion charter schools in California.

charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district."[81] Prior to the passage of Proposition 39, school districts were only required to allow charter schools to use a district facility if that facility was not currently being used by the district for instructional or administration purposes or if the facility had not been historically used for rental purposes. With the passage of Proposition 39, it became the legal responsibility of school districts to make all reasonable efforts to house charter school students in facilities that were essentially equivalent to those used to house in-district students. Thus, Proposition 39 substantially increased the responsibility of school districts to provide adequate facilities for charter schools.

The charter school provisions of Proposition 39 were phased in over a three-year period. For school districts that passed a bond measure before November 8, 2003, the provisions took effect in July of the year following the passage of a bond measure. For those school districts that did not pass a bond prior to November 8, 2003, the provisions took effect on that date. Furthermore, the charter school provisions of Proposition 39 only apply to charter schools with an enrollment or projected enrollment of 80 students or more. If the actual or projected enrollment of a charter school is less than 80 students, a district can deny the facility requests of the charter school. While the provisions of Proposition 39 require school districts to provide facilities for charter schools, districts are not required to use unrestricted general fund revenues to make those facilities available. In particular, section 47614 of the California Education Codes states that, "no school district shall be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students." However, if a district does choose to use unrestricted general fund revenue, the district may charge the charter school a "pro rata share" of the facility costs. The pro rata share is based on the ratio of space allocated by the school district to the charter school divided by the total space of the district. If the district uses any other source of revenue (e.g. local bonds or state aid) to finance the cost of charter school facilities, the charter school could not be charged for those costs.

While the intent of Proposition 39 was to ensure that public school facilities were shared fairly among all students, including those enrolled in charter schools, the meaning of "fair" quickly became a matter of contentious debate. The debate may have culminated when the Fifth District Court of Appeals in California ruled that, "charter school students are district students and that school district may not discriminate against charter school students when it comes to providing facilities."[82] The court's ruling stems from the case of *Ridgecrest Charter School v. Sierra Sands Unified District*. In September of 2002

[81] California Education Code, Section 47614.
[82] California Charter School Association, July 1, 2005.

Ridgecrest Charter School filed a Proposition 39 request for district facilities within Sierra Sands Unified District. The district responded by approving a total of nine and a half class rooms located at five different schools.[83] The charter school rejected the district's offer, arguing that that the offer violated the provisions of Proposition 39 because it did not provide facilities that were contiguous. Ridgecrest Charter then made a counter proposal, asking the district to make available one particular site that was currently being used primarily for nonacademic purposes. The district rejected the charter schools' proposal arguing it had made every reasonable attempt to locate and make available space at the fewest number of sites.

On July 29, 2003, Ridgecrest Charter took its case to the court and filed a complaint with the Kern County Superior Court. In its complaint Ridgecrest asked the court to uphold its right under the provisions of Proposition 39 to receive facilities that were contiguous and mandate Sierra Sands Unified to provide facilities at a single site. The presiding judge in the case ruled that Sierra Sands had not abused its discretion in allocating facilities and therefore Ridgecrest Charter was not entitled to a single site to house its students. Ridgecrest appealed and the case was remanded to the Court of Appeal, Fifth District. On June 29, 2005, the Court of Appeal overturned the lower court's ruling. In its decision, the court stated that, "a school district's exercise of its discretion in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space between them.**"**[84] The decision goes on to say that the court interprets the meaning of "reasonably equivalent" and "fairly shared" to mean that, "to the maximum extent practicable, the needs of the charter school must be given the same consideration as those of the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous."[85] While the court realized that Ridgecrest's facility requests would most likely cause "considerable disruption and dislocation among the District's students, staff, and programs," it nevertheless ruled that the provisions of Proposition 39 required that districts share their facilities fairly with charter school students.

Technically, the court's decision in *Ridgecrest Charter School v. Sierra Sands Unified District* applies only to those school districts located in the Fifth Appellate district of California. However, the decision is likely to affect school districts throughout the state as charter schools become more aggressive in pursuing their Proposition 39 facility requests. For example, a survey of charter schools conducted by EdSource in early 2005 revealed that among the 135 charter schools that submitted Proposition 39 requests for facilities to their districts, 53 (or 39%) of those schools reported that they did not receive

[83] *Ridgecrest Charter School v. Sierra Sands Unified School District*, 130 Cal.App.4th 986, 30 Cal.Rptr.3d 648; hereafter *RCS v. Sierra Sands Unified.*
[84] *RCS v. Sierra Sands Unified*, pp. 15.
[85] *RCS v. Sierra Sands Unified*, pp. 15.

satisfactory facilities in response to their request or through continued negotiations.[86] Some of those charter schools have now filed lawsuits to address their facility needs. For example, in December of 2005, two charter schools located in San Diego Unified filed a complaint with the San Diego Superior Court arguing that the district had failed to uphold the provisions of Proposition 39 to provide their students with adequate facilities. While it is still too early to fully evaluate the impact of Proposition 39 on the facility needs of charter schools, there is little question that the proposition has fundamentally altered the facility predicament faced by these schools.

Facility Funding for Charter Schools

In addition to passing Proposition 39, California has also implemented several programs designed to increase funding for charter school facilities. These include the Charter School Facilities Program (CSFP), which is financed with bond revenue from Propositions 47 and 55, the Charter School Revolving Loan Fund (CSRLF), the Charter School Facility Grant Program (CSFGP), and the Charter School Facilities Incentive Grants Program (CSFIGP) which is funded primarily by the federal government. This section concludes by discussing each of these programs in turn.

Assembly Bill 14 enacted in 2002 established the Charter School Facilities Program (CSFP) as a pilot program to assist charter schools in obtaining adequate school facilities. The program allows charter schools or charter school granting authorities to apply for preliminary apportionments (reserve funds) for new school construction projects. Prior to the establishment of the CSFP, charter schools wishing to access state bond revenue for facilities projects had to petition their school districts to include them on applications for state funding. According to EdSource and the Office of Public School Construction, only five new construction projects and four modernization projects received funding prior to the establishment of the CSFP. The CSFP was originally funded with $100 million of Proposition 47 bond revenue. With the passage of Proposition 55 in 2004, the program received an additional $300 million in funding.

The CSFP allows districts to obtain funding for new school construction projects directly or through the school district where the charter school is located.[87] The program currently does not provide funding to charter schools for modernization projects nor does it provide funding to schools offering non-classroom based instruction.[88] To be eligible for funding, a charter school must demonstrate that the district in which it is physically located is eligible for new school construction. Recall that under the

[86] EdSource surveyed the universe of charter schools operating in California as of the 2004-05 year. 92% of all charter schools responded to the survey.
[87] State Allocation Board and the California School Finance Authority, "Charter School Facility Funding: Joint Report to the Legislature," July 2005.
[88] If approved by voters this November, Proposition 1D would expand Charter School Facilities Program to include modernization funding.

School Facility Program this amounts to providing evidence that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment.[89] Similar to other programs funded through the School Facility Program, state aid is provided on a 50/50 state and local matching basis. Thus, charter schools wishing to access funds in the CSFP must provide 50% of a project's cost. Charter schools have the option of meeting the 50% match either as a lump sum or by entering into lease agreement with the state for a period of up to 30 years. To qualify for funding, a charter school must demonstrate to the California School Finance Authority that it is financially sound and is capable of meeting the required 50% local matching contribution.

Similar to the Critically Overcrowded School Program, the CSFP allows charter schools to receive preliminary apportionments for new school construction projects. A preliminary apportionment is essentially a reservation of funds which provides a charter school with more time to find an appropriate location for a new school construction project and to obtain the necessary approvals from the California Department of Education and the Division of the State Architecture. Charter schools have up to four years to convert their preliminary apportionments into a final apportionment.

In the original round of funding, which consisted of $100 million in Proposition 47 bond revenue, the Office of Public School Construction received 17 applications that were eligible for funding. Given the limited funding available, only six of those projects were able to be funded. As a result of this shortfall in funding, the state legislature enacted SB 15 in 2003. The new legislation revised the CSFP regulations to include caps on charter school project funding. Specifically, the new legislation limited the number of per pupil grants that could be requested, the maximum acreage allowed for site acquisition, and total project costs. Because of these caps, in the second round of funding the State Allocation Board was able to fund 28 out of 34 eligible projects.[90] Table 19 lists the CSFP per-pupil grant amounts and the caps on funding. When the number of eligible project applications exceeds the total amount of funding available in the CSFP, preliminary apportionments are rationed so that they are representative of: (1) various geographical areas in the state, (2) various grade levels served by charter schools, (3) urban, rural and suburban areas of the state, and (4) large, medium and small charter schools. Within each of those areas, preference is given to charter schools located in districts with large percentages of students eligible for free or reduced price lunch, those located in districts with overcrowded schools, and nonprofit charters.

[89] If the district where the charter school is, or will be, located has not established new construction eligibility, the charter school must submit the appropriate documentation establishing eligibility at the time it submits its application for a principle apportionment to the OPSC.

[90] State Allocation Board and the California School Finance Authority, "Charter School Facility Funding: Joint Report to the Legislature," July 2005.

In addition to the CSFP, the State also administers a number of loan and grant programs designed to assist charter schools in obtaining adequate facilities. The first such program was established in 1996 when the state legislature created the Charter School Revolving Loan Fund (CSRLF). The program provides low-interest loans of up to $250,000 for non-conversion charter schools.[91] Schools can receive more than one loan as long as the total amount received does not exceed $250,000 over the lifetime of the charter school but any given loan must be repaid within five years. Charter schools that are incorporated may borrow directly from the CSRLF, all other charter schools must request a loan through their charter-granting authority. Charter schools can use the proceeds of a loan to help meet any of the objectives outlined in their charter, including the leasing of facilities and the costs of facility improvements.

In 2001, the state legislature created the Charter School Facility Grant Program (CSFGP) to provide charter schools with assistance for facilities rent and leasing costs. To be eligible for a grant, 70% of the students enrolled in a charter must be eligible for free or reduced price meals or the charter school must be located in district where at least 70% of all students are eligible for free or reduced price meals. In addition, conversion charter schools and those that have received reasonably equivalent facilities through a Proposition 39 request are not eligible for a grant. The program allows districts to receive a reimbursement of up to $750 per pupil for rental and leasing expenditures but no more than 75% of the charter school's total annual rental and leasing cost. Since the program's inception in 2001, the state legislature has appropriated $22.2 million for the program.

Finally, the Charter School Facilities Incentive Grants Program (CSFIGP) is also designed to provide charter schools with assistance for facility costs. The CSFIGP was implemented in 2005 shortly after the California School Finance Authority (CSFA) was awarded a grant of $49.25 million from the U.S. Department of Education to assist charter schools in obtaining the adequate school facilities. The proceeds of the grant are to be allocated over a five year period. Grant awards can be used to cover a charter school's rent, lease, mortgage or debt service costs, or for the costs associated with the purchase, design and construction of facilities.[92] Similar to the Charter School Facility Grant Program, the CSFIGP allows districts to receive a reimbursement of up to $750 per pupil for rental and leasing expenditures but no more than 75% of the charter school's total annual rental and leasing cost. Furthermore, no grant may exceed $250,000 per year, with a maximum grant period of three years. The CSFIGP also provides per-pupil grants for the construction and renovation of school facilities. Charter schools are awarded $1,000 per pupil to cover up to 75% of the annual costs of eligible construction projects. Individual project

[91] The discussion in the text describes the CSRLF program as amended in 2000. Under the original legislation the maximum grant available was $50,000. Furthermore the proceeds of the loan had to be used within the first year of operation and repaid within two years.

[92] California School Finance Authority, Text of Regulations, Charter School Facilities Program – Implementation of State Charter School Facilities Incentive Grant Program. Full text is available at: http://www.treasurer.ca.gov/csfa/charter/2005/pgm_regulations.pdf.

grants are limited to a maximum of $500,000 per year, with a maximum grant period of three years. To qualify for a grant, a charter school must be in good standing with its chartering authority and have completed at least one year of instructional activity.[93] Funding priority for CSFIGP grants is based on a preference point system. Specifically, charter schools receive preference points based on: (1) the percentage of free or reduced price students attending a school (maximum of 40 points), (2) location in an overcrowded school district (maximum 40 points),[94] and (3) whether the school is a nonprofit entity (20 points).

9. Discussion

Sections 2 through 8 of this report documented various aspects of school facility funding in California and examined how revenue for new school construction and modernization projects is distributed across school districts. This final section provides a review of some of the major findings in each section and links those findings to research reports that have recommended various changes to the current system of school facility finance in California.

A Predictable and Consistent Method of Financing School Facilities

Sections 2 and 3 documented the history of school facility finance in California and examined how the level of school facility funding has changed over time. Those sections revealed that California's system of school facility finance has changed frequently and that facility spending has fluctuated quite dramatically over time. While several factors are responsible for the dramatic fluctuations in facility spending, one factor stands out; namely, the irregular nature of statewide school facility bond issues. Several recent reports have suggested the state develop a more consistent and predictable method of financing school facilities. For example, in her 2001 report entitled, "A New Blueprint for California School Facility Finance," Legislative Analyst, Elizabeth Hill, notes:

> State bonds are usually fully depleted before additional funds are authorized by voters, leaving "hills and valleys" of revenue availability. This unpredictability in state funding impairs district capacity to plan, build schools, and raise supplementary local funds.[95]

Similarly, in its 2002 report, the Joint Legislative Committee to Develop a Master Plan for Education notes:

> … there is no doubt that the current model of funding for public school facilities in California is unresponsive to the planning and funding needs of school districts, and, therefore, results in the

[93] In addition, charter schools receiving funding through the Charter School Facility Program are ineligible for grants.

[94] The preference points are based on the percentage overcrowded, which is calculated by dividing the number of unhoused students in a district by the district's current enrollment.

[95] Legislative Analyst's Office (2001), p. 4.

> inefficient use of resources for facilities. In particular, reliance on state General Obligation bonds and the current method of allocating bond proceeds has created a system that has not been conducive to long-term planning for school facility needs at the local level, and that fails to 'leverage' or encourage the development of local sources of funding for school capital outlay needs.[96]

Reports issued by Cohen (1999), PolciyLink and MALDEF (2005), the Little Hoover Commission (2000), and the California Performance Review Commission (2004) all reach a similar conclusion.

Each of the reports mentioned above provides a slightly different recommendation on how to address the issue but all suggest that the state develop a more predictable and consistent method of financing school facilities. For example, both the LAO report and the Master Plan for Education report call for replacing the current system with a new system that would provide school districts with annual per-pupil allocations from the state General Fund to finance school facility needs.

The irregular nature of statewide school facility bond issues and the "hills and valleys" of revenue availability may also be partly responsible for some of the recent increases in school construction costs. In particular, because statewide bond issues occur infrequently and tend to be quite large when they do occur, school construction costs may rise following a bond issue. In essence, funding school construction with infrequent and large G.O. bond issues causes the demand curve for school construction to shift right following a statewide bond issue. If the supply of school construction is fixed or relatively inelastic, this would lead to a relatively large increase in construction costs due to increased demand. While there are no research reports that document a significant link between construction costs and the passage of statewide bond issues, there is plenty of anecdotal evidence that suggests construction costs have risen significantly since the passage of Proposition 1A and Propositions 47 and 55. Thus, moving towards a more predictable and consistent method of funding school facilities may also have the (positive) unintended consequence of reducing construction costs.

Unifying State Oversight of School Facility Projects

Section 4 of this report provided an overview of the School Facility Program which was established in 1998 following the passage of AB 50. As noted in that section, the SFP was designed to stream-line the application process and simplify the overall structure of the state's school facilities program. Several reports, including Cohen (1999) and the Little Hoover Commission (2000), suggest that the state has made significant progress in streamlining the regulatory process and improving the transparency and efficiency of the state's school facility program. Nevertheless, these reports have called for streamlining the state's school facility approval process even further. For example, in its 2004 report, the California Performance Commission notes:

[96]Joint Legislative Committee to Develop a Master Plan for Education (2002), p. 172.

> The state's multi-billion dollar investment in local school buildings involves a cumbersome, duplicative and time-consuming multi-agency approval process that fails to review important elements of the projects. The state needs a facility approval process that ensures the safety and financial security of school sites and construction, without delaying or adding cost to a project.[97]

Reports issued by the Little Hoover Commission (2000) and the Pacific Research Institute (2004) come to similar conclusions.

The concerns raised in these reports revolve around the fact that school districts must interact with multiple state agencies when seeking approval for new school construction and modernization projects. For example, as noted in section 4, in order to obtain funding for facilities projects, school districts must obtain approval from a minimum of six state agencies. In addition, the Department of General Services' website notes that, "seven other State agencies operate approximately 40 programs that also may become involved under certain conditions. The number of entities involved can make the process of building or remodeling a school extremely complex and time-consuming." Based on these facts, the Little Hoover Commission (2000) and the California Performance Committee (2004) have called for unifying state oversight of school facility projects. Both reports call for creating a single state agency (or the functional equivalent thereof) that would serve as the point of contact for school districts.

Equalizing the Ability of School Districts to Raise General Obligation Bond Revenue

Sections 5 and 6 documented the size and distribution of school facility revenue between 1998 and the present. Those sections revealed that funding for school facility projects varies widely across districts. Some of the variation can be explained by differences across districts in need. For example, districts with higher enrollment growth and those that have not invested heavily in school infrastructure in the recent past, tend to have significantly higher levels of facility funding. However, section 6 also highlighted the fact that facility funding tends to vary systematically with district property wealth. In particular, districts with higher assessed value per pupil tend to have significantly higher local bond revenue per pupil and consequently higher total revenue per pupil.

The relationship between assessed value and the ability of school districts to raise general obligation bond revenue was the primary focus of a 1986 report on school facilities prepared by the Legislative Analyst's Office. The report, which was written just prior to the passage of Proposition 46, highlighted a potential problem with the state legislature's 1986 proposal to reinstate the authority of local school district to raise local bond revenue. Specifically, the report notes:

> One potential drawback of this proposal, however, is that it could violate the principles on which the Supreme Court's decision in the *Serrano v. Priest* case was based. This is a legitimate

[97] California Performance Review (2004), Vol. 4, p. 899.

> concern. School districts with considerable property tax wealth could raise large amounts for school facilities by imposing a very low tax rate, while school districts with less property tax wealth would not be able to raise sufficient funds even with a very high tax rate.

In *Serrano v. Priest,* the California Supreme Court ruled that differences across district in spending per pupil could not be significantly related to differences in property wealth. Although, the issue at hand in that case was the relationship between *current* spending and property wealth, it seems apparent that the LAO was concerned that a similar argument could be made for the relationship between *capital* (infrastructure) spending and property wealth. To illustrate the LAO's point, consider two unified districts, one with an assessed value per pupil of $191,000 (approximately the 10th percentile of assessed value per pupil among unified districts in 2005), and the other with an assessed value per pupil of $1,204,000 (approximately the 90th percentile of assessed value). If both districts impose a tax rate of 0.06% (the maximum allowed), the first district would raise $115 per pupil in local bond revenue while the second district would raise $722.[98] Thus, even though the two districts impose the same tax rates, the second district can raise nearly seven times more revenue.

In its 1986 report, the LAO suggested the state implement a guaranteed tax yield system to address such differences in the ability of local districts to raise revenue through local general obligation bond issues. As noted by de Alth and Rueben (2005), under such a system, the state would guarantee that any given tax rate provided all districts with the same amount of revenue. Specifically, the state would provide a schedule listing a guaranteed yield per pupil from any given tax rate. State aid would then be used to "top off" the revenue raised by low-wealth districts from a given tax rate. Thus, the system would be based on variable state matching rates with low-wealth districts receiving higher levels of state aid than high-wealth districts. A similar type of program was suggested by the LAO in its 2001 report on school facility finance.[99]

Expanding the Definition of Critically Overcrowded Schools

Section 7 examined how the characteristics of critically overcrowded and multi-track schools differed from other schools. It also examined how school facility funding in districts that contain critically overcrowded and multi-track schools compares to other districts. The section illustrated that critically overcrowded and multi-track schools tend to enroll significantly higher proportions of

[98] Under the guidelines set forth by Proposition 39, unified districts are prohibited from proposing, on any single ballot, a tax increase of more than $60 per $100,000 of assessed valuation, implying a tax rate of 0.06%.

[99] In its 2001 report, the LAO suggested an "ability-to-pay" adjustment program. Under such a system, the state would target revenue to districts with the least ability to raise revenue through local general obligation bonds and developer fees. Specifically, the state would fund the difference between some set standard of revenue per pupil and the amount of revenue a district could raise by imposing the maximum allowable tax rate and collecting developer fees at the maximum rate allowed by law.

disadvantaged and minority students. It also showed that districts that contain critically overcrowded schools tend to receive substantially higher facility funding, particularly Los Angeles Unified. In its 2005 report on ending overcrowding in California's public schools, PolicyLink and MALDEF note that the Critically Overcrowded Schools (COS) Program, which was implemented in 2002, has made progress in addressing the problem of overcrowding. Nevertheless, the report also outlines some potential concerns with the COS program. Specifically, the report notes that the standard used by the CDE to define critically overcrowded schools is quite high: a school must have a student density that is at least 200% of the CDE's recommended density. Furthermore, the report goes on to note:

> … while density is considered a good measure of overcrowding, using density alone is inadequate in describing the full extent of the problem. California schools that use temporary approaches to increase school capacity, such as multi-track year-round education calendars, busing, and portable classrooms—practices that are strong indicators of school overcrowding—are not fully captured under the state definition. Portable classrooms are usually counted as permanent classroom space, bused students are not counted in the schools they should attend but are unable to because there is no room for them, and the presence of multitrack year-round calendars is not seen as an indication of overcrowding. The COS program should strive to broaden its definition and capture the schools that use such strategies.[100]

Recently, the state legislature has taken action to address some of the concerns raised by PolicyLink and MALDEF. In particular, AB 127, the Kindergarten-University Public Education Facilities Bond Act of 2006, contains $1 billion in funding for Overcrowding Relief Grants. The grants would enable districts to reduce the number of portable classrooms on overcrowded school sites and replace them with permanent classrooms.[101] To be eligible for a grant, a school district must contain schools with a student density that is 175% or more of the CDE's recommended density. The Act allows districts to exclude portable classrooms from the count of existing capacity for the purpose of establishing eligibility for new school construction.[102] Thus, the Act addresses (at least to some degree) two of the concerns raised by PolicyLink and MALDEF: it reduces the density threshold for participating in the program from 200% of the CDE standard to 175% of that standard and it excludes portable classrooms from a district's calculation of existing capacity. According to the Legislative Analyst's Office, under the definition of overcrowding used by the Overcrowding Relief Grants program, approximately 1,800 schools (20 percent of all schools) would be eligible for funding.[103]

While AB 127 addresses some of the concerns raised by PolciyLink and MALDEF, it does not address their concerns regarding schools that utilize multi-track year-round schooling or busing to relieve

[100] PolicyLink and MALDEF (2005), p. 6.
[101] State Allocation Board, Implementation Committee Meeting, July 21, 2006.
[102] Portable class rooms used for the Class Size Reduction Program may not be excluded from the calculation of existing capacity.
[103] Legislative Analyst's Office (July 2006), p. 3.

severe overcrowding. An older version of AB 127, namely AB 58, did contain language that would have allowed school districts access to state funds to "provide permanent school facilities for pupils in multi-track year round programs or pupils on double-session."[104] However, the provision was eliminated from the final version of AB 127.[105] Other recent legislation has taken action to eliminate the most extreme form of multi-track year-round schooling, commonly known as Concept 6. Relative to other multi-track year round programs, the Concept 6 program provides the maximum enrollment given a school's capacity and has the potential to increase the seating capacity of a school by 50%.[106] However, this increased capacity comes at a cost. Students that attend schools operating on a Concept 6 calendar receive only 163 days of instruction. Students attending schools that operate on a traditional calendar or any other multi-track year round calendar receive 180 days of instruction. As of 2004-05, 152 schools were operating on a Concept 6 year-round calendar and of those 128, or 84%, were located in Los Angeles Unified.[107] AB 1550, enacted in 2004 prohibits a school district from operating a Concept 6 program unless the district operated such a program continuously since the 2003-04. The bill also prohibits the operation of a Concept 6 program after July 1, 2012.

Adapting to Changing Enrollment Trends

The annual growth rate of student enrollment in California has been steadily declining since the mid-1990's and is projected to continue declining until about 2009 or 2010. Furthermore, according to projections made by the California Department of Finance, between 2005-06 and 2014-15 total student enrollment in California is predicted to increase by only 191,042 students or approximately 3%. In light of this trend of slowing enrollment growth, the Legislative Analyst's Office has suggested the state allocate a larger fraction of any future statewide bond issues towards modernization of existing school facilities and a smaller fraction towards new school construction.[108] Proposed funding for the Kindergarten-University Public Education Facilities Bond Act of 2006 is consistent with the LAO's recommendation. In particular, if approved by voters this November, the Act would provide $3.3 billion for modernization projects versus $1.9 billion for new school construction projects. In contrast, bond revenue from Propositions 47 and 55 provided 3.7 billion for modernization projects and $8.8 billion for new school construction.

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[104] Assembly Bill 58, Amended in Assembly January 4, 2006. Full text available at: http://info.sen.ca.gov/pub/bill/asm/ab_0051-0100/ab_58_bill_20060104_amended_asm.pdf

[105] In 2002, the state legislature also considered making funding for districts that utilized multi-tract year-round schooling programs a priority for the Critically Overcrowded Schools program. See Coalition for Adequate School Housing New Archives, February 15, 2002.

[106] Oakes (2002), p. 6.

[107] In 2004-05, approximately 4% of all students were enrolled in a school operating on a Concept 6 year-round calendar. Source: California Department of Education list of schools operating on a multi-track year-round calendar.

[108] Legislative Analyst's Office (February 2006).

Creation of a Statewide School Facility Inventory System

Finally, sections 5, 6, and 7 of this report alluded to an important problem facing California's system of school facility finance: the state lacks a coherent definition of what it means for a school to have adequate facilities and it lacks a statewide school facility inventory system. As Pastor and Reed (2005) note:

> Perhaps the most fundamental barrier to an equitable distribution of school bond funds is the lack of a comprehensive school facilities assessment. The state simply does not have the information to compare schools and identify the greatest facility needs.

Reports issued by the Little Hoover Commission (2000), the Joint Legislative Committee to Develop a Master Plan for Education (2002), the Legislative Analyst's Office (2001), and PolicyLink and MALDEF (2005) echo a similar concern.

Although the state currently lacks a comprehensive school facilities assessment, it is making progress towards resolving this issue. As part of the Williams settlement, the state has begun work on implementing a school facilities needs assessment program. Specifically, beginning in 2005-06, SB 550 requires school districts that participate in the SFP and the Deferred Maintenance Program to establish a Facilities Inspection System (FIS) and to ensure that all schools within the district are in "good repair" (i.e. clean, safe and functional).[109] SB 550 also charged the Office of Public School Construction with developing an evaluation instrument that could be used by school districts to identify if a school facility is in good repair. This instrument is to be used by school districts on an interim basis until the state legislature adopts a permanent standard for good repair. Those statewide standards must be adopted by the legislature and governor no later than September 1, 2006. Although, the final form of these statewide standards has not been fully established, the Office of Public School Construction made the following suggestion in March of 2006:

> … the State standard for good repair should be described in statute in narrative form, of moderate detail, and be composed of the assessment of more than a dozen school components. Statute should also require that an evaluation tool be developed and maintained by the OPSC or another State agency and it should be designed to accommodate a rating and scoring system.[110]

While it is too early to tell how the implementation of a state standard for good repair will affect school facility finance in California, it nevertheless represents a significant step forward.

[109] According to the Office of Public School Construction, nearly 89% of school districts participate in the SFP or Deferred Maintenance Program. Thus, the vast majority of California's school districts will be required to implement a Facilities Inspection System.

[110] Office of Public School Construction (2006), p. 1.

Tables and Figures

Figure 1
California per Pupil School Infrastructure Spending, 1960-2005

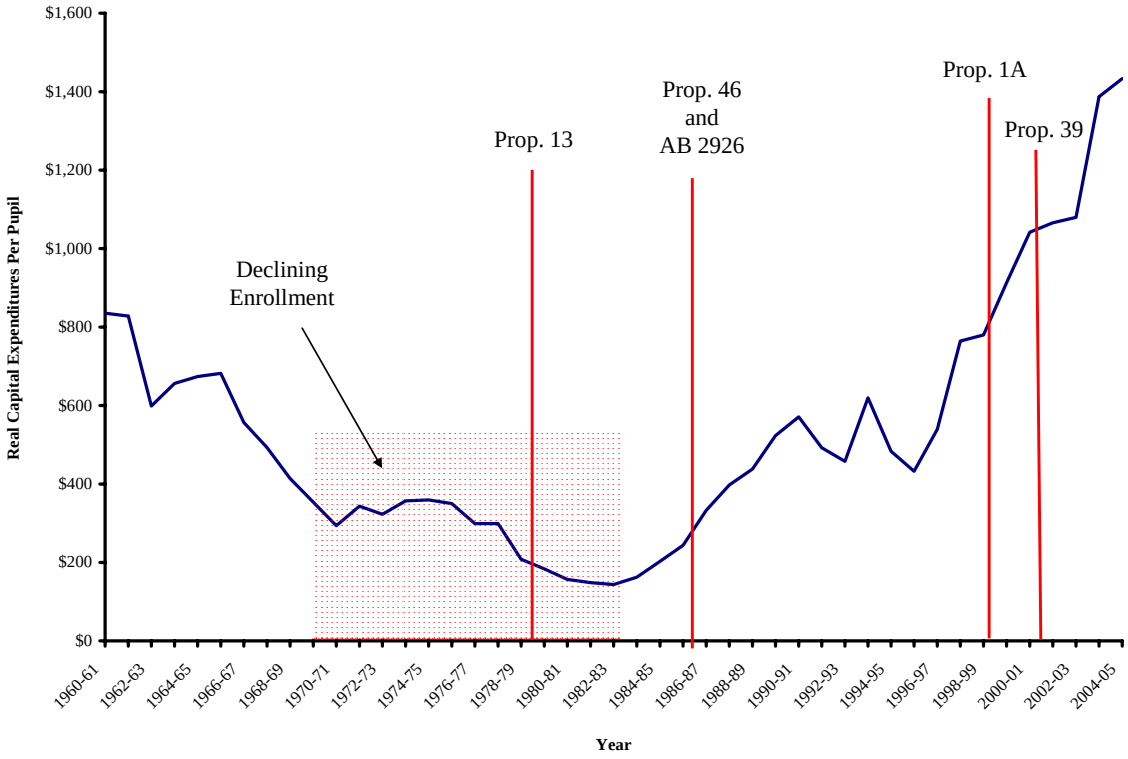

Table 1
State K-12 Education General Obligation Bonds, 1949-2005
($ millions)

Years	No. proposed	No. passed	Amount proposed	Amount passed	Real amount passed (2005 $)
1949-60	5	5	1,055	1,055	5,977
1961-70	3	3	735	735	3,772
1971-80	4	2	1,050	500	1,829
1981-85	2	2	950	950	1,571
1986-90	5	5	4,000	4,000	5,885
1991-95	3	2	3,800	2,800	3,662
1996-00	2	2	8,725	8,725	10,204
2001-05	2	2	21,400	21,400	23,316
Total	26	23	$41,715	$40,165	$56,215

Table 2
Local K-12 Education General Obligation Bonds, 1986-2005
($ millions)

Years	No. proposed	No. passed	Amount proposed	Amount passed	Real amount passed (2005 $)
1986-90	124	65	2,730	1,334	1,944
1991-95	292	128	8,499	3,603	4,613
1996-00	444	282	23,039	14,127	16,441
2001-05	355	285	28,621	26,091	28,058
Total	1,215	760	$62,889	$45,155	$51,056

Figure 2
Facility Spending per Pupil: CA versus the U.S, 1988-2004

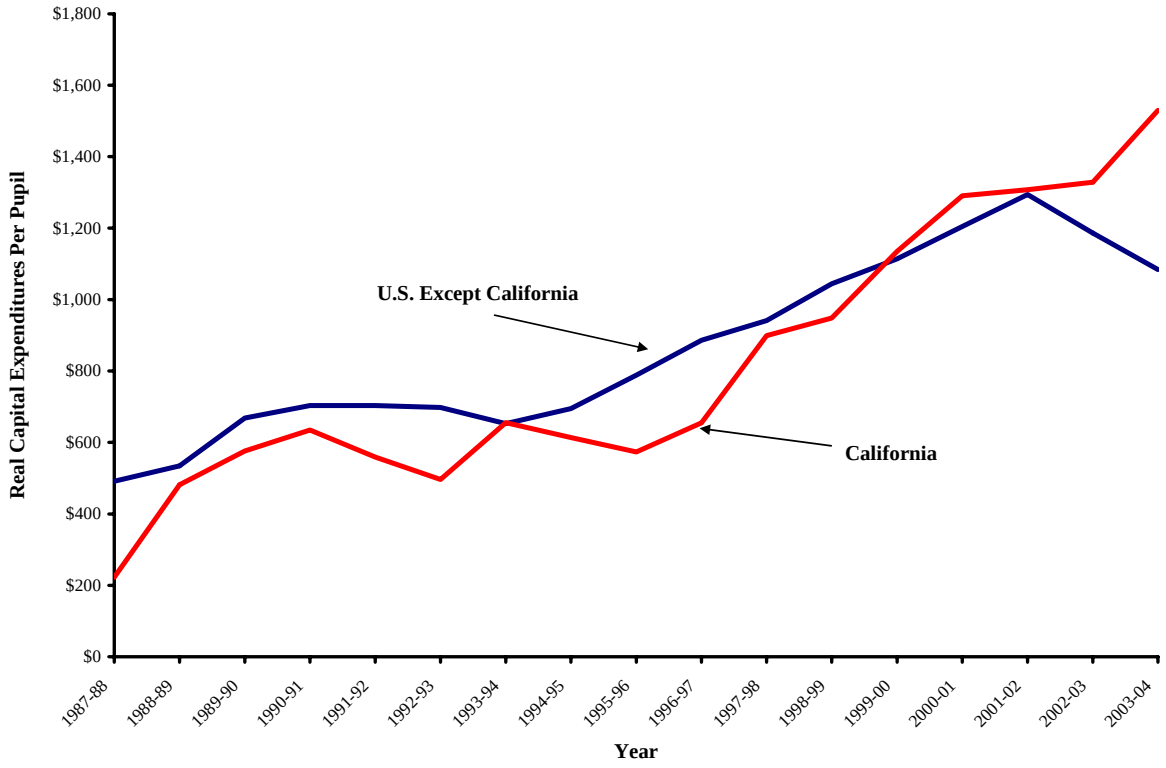

Table 3
State Comparisons of Facility Spending per Pupil, 1988-2004

Period	U.S. Except CA	CA	CO	FL	NJ	TX	WA
1988-92	$620	$495	$698	$1,076	$520	$596	$1,267
1993-96	$708	$585	$886	$1,114	$744	$833	$1,196
1997-00	$996	$909	$1,166	$1,148	$1,058	$1,168	$1,199
2001-04	$1,192	$1,364	$1,193	$1,371	$1,354	$1,348	$1,253
1988-04	$864	$818	$969	$1,172	$895	$963	$1,231
Enrollment Growth 1988-04	18.6%	42.9%	35.2%	55.4%	26.3%	33.8%	31.7%

Figure 3
New School Construction and Modernization Funding Process

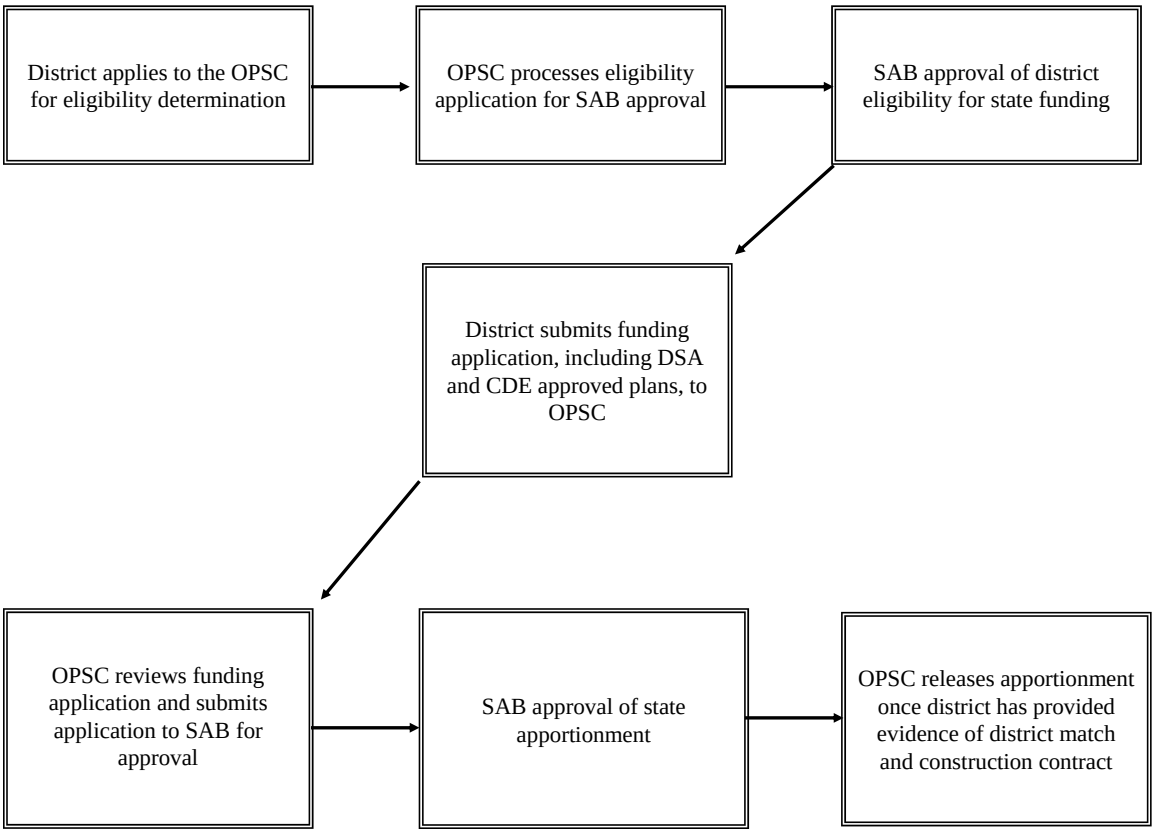

Table 4
New School Construction Grant Amounts

Type of Student	Per-Pupil Grant Amount
Elementary	$7,082
Middle School	$7,490
High School	$9,805
Special Day Class – Non-Severe	$15,096
Special Day Class – Severe	$22,572

Table 5
Modernization Grant Amounts

Type of Student	Buildings 25 years old or older but less than 50 years old.	Buildings 50 years old or older.
Elementary	$3,059	$4,249
Middle School	$3,236	$4,494
High School	$4,236	$5,884
Special Day Class – Non-Severe	$6,521	$9,056
Special Day Class – Severe	$9,746	$13,543

Figure 4
COS Program Funding Process

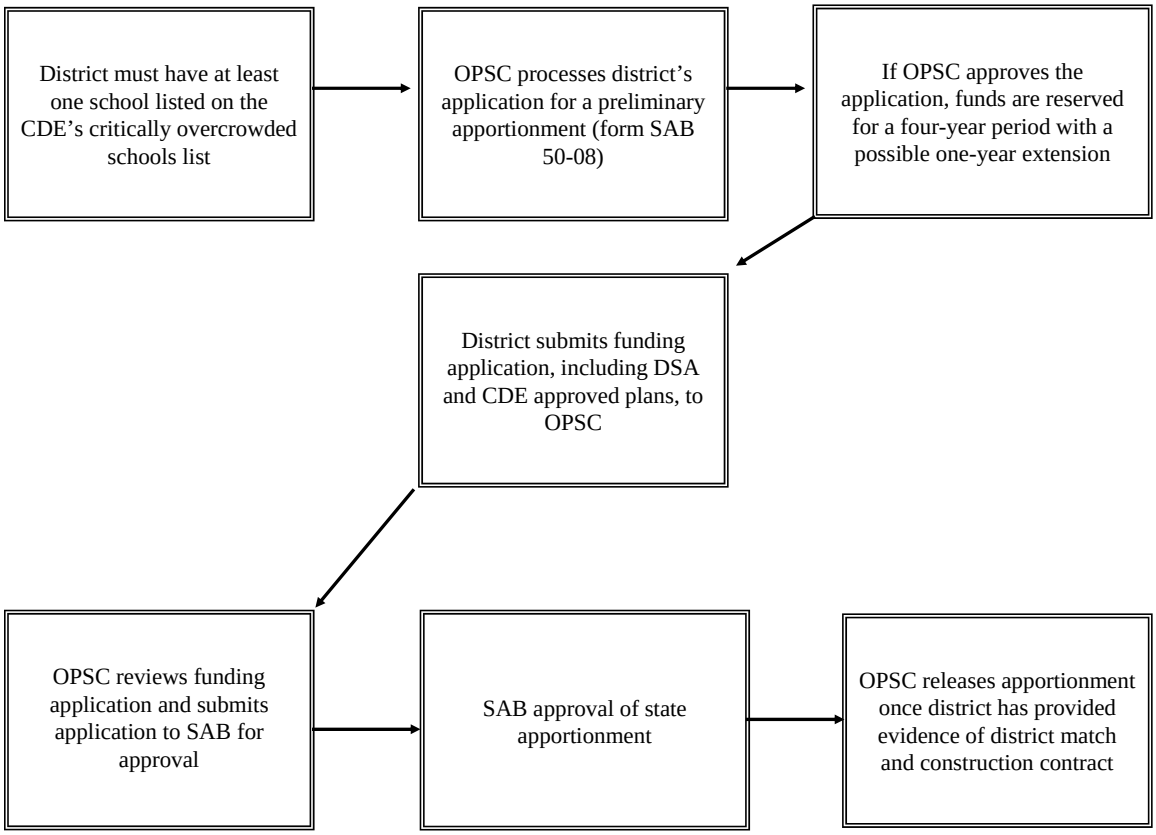

Table 6
Sources of Revenue for School Construction and Modernization, 1998 – Present

Source	Total Revenue ($ Billion)	Percentage
Local G.O. Bonds	38.4	53
State Aid (State Bond Apportionments)	21.9	31
Developer Fees	6.23	9
Mello-Roos and SFID's	0.71	1
Other	3.99	6
Total	71.22	100

Table 7
Revenue per Pupil by Source, 1998 – Present

Revenue Source	Unified Districts	Elementary Districts	High School Districts
Local G.O. Bonds	$4,051	$3,293	$6,951
State Aid	3,496	3,429	4,735
Developer Fees	1,175	1,077	1,408
Total	9,658	8,246	13,817
Districts	331	548	83
Average Enrollment	12,896	2,127	6,273

Table 8
Distribution of Revenue per Pupil, 1998 – Present

	Percentiles*				
Revenue Source	10	25	50	75	90
Unified Districts					
Local G.O. Bonds	0	1,639	4,979	12,200	16,883
Local G.O. Bonds + State Aid	3,012	5,791	8,475	16,202	19,743
Total	4,274	7,580	10,283	18,211	20,270
Elementary Districts					
Local G.O. Bonds	0	0	1,487	4,874	7,786
Local G.O. Bonds + State Aid	663	1,913	5,752	8,806	11,643
Total	1,278	3,193	7,223	11,045	15,263
High School Districts					
Local G.O. Bonds	0	5,171	7,666	11,154	17,960
Local G.O. Bonds + State Aid	4,585	8,228	12,790	17,345	22,075
Total	6,637	10,987	14,877	22,033	26,567

* Percentiles are weighted by district enrollment.

Table 9
Distribution of Revenue per Pupil by Quintiles of Enrollment Growth*

Revenue Source	First Quntile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than 0.8%	0.8% - 8.0%	8.1% - 9.3%	9.4% - 18.0%	Greater than 18.0%
Local G.O. Bonds	4,032	3,890	4,770	4,109	4,098
State G.O. Bonds	2,425	2,625	2,842	4,021	6,559
Total	7,960	8,319	9,031	10,143	14,725
Elementary Districts	Less than -4.0%	-4.0% - 3.6%	3.7% - 10.4%	10.5% - 21.0%	Greater than 21.0%
Local G.O. Bonds	2,715	4,897	4,956	2,226	2,534
State G.O. Bonds	2,512	2,518	3,160	4,638	5,660
Total	6,304	8,612	9,493	8,235	10,925
High School Districts	Less than 9.7%	9.7% - 17.4%	17.5% - 24.0%	24.1% - 33.7%	Greater than 33.7%
Local G.O. Bonds	4,384	8,445	8,749	7,828	8,642
State G.O. Bonds	3,937	4,402	4,709	5,114	7,980
Total	10,210	14,285	16,030	14,484	20,836

* Quintiles are weighted by student enrollment

Table 10
Distribution of Revenue per Pupil by Quintiles of Previous Facilities Investment*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than $5,500	5,500 - 6,000	6,001 - 6,800	6,801 - 9,260	Greater than 9,260
Local G.O. Bonds	4,277	4,132	4,846	2,966	4,241
State G.O. Bonds	3,253	3,719	3,302	3,687	3,740
Total	9,087	9,346	10,266	8,980	10,853
Elementary Districts	Less than $5,000	5,000 - 6,390	6,391 - 7,816	7,817 - 10,030	Greater than 10,030
Local G.O. Bonds	4,656	3,638	3,369	2,211	2,467
State G.O. Bonds	4,143	3,496	2,983	4,113	2,294
Total	9,941	8,359	7,529	8,108	6,579
High School Districts	Less than $5,950	5,950 - 7,730	7,731 - 9,440	9,441 - 11,730	Greater than 11,730
Local G.O. Bonds	11,565	9,147	7,016	3,957	3,869
State G.O. Bonds	6,203	4,243	4,541	4,707	4,133
Total	19,575	14,994	13,261	11,559	10,702

* Quintiles are weighted by student enrollment

Table 11
Distribution of Revenue per Pupil by Quintiles of Median Household Income*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than $36,640	36,640 - 40,415	40,416 - 47,395	47,396 - 57,390	Greater than 57,390
Local G.O. Bonds	2,816	3,289	4,402	3,670	6,300
State G.O. Bonds	2,553	3,944	4,133	3,589	4,009
Total	6,481	9,241	11,685	9,628	12,681
Elementary Districts	Less than $34,700	34,700 - 42,080	42,081 - 48,560	48,561 - 65,700	Greater than 65,700
Local G.O. Bonds	1,772	2,188	1,422	3,418	9,685
State G.O. Bonds	3,660	2,750	3,681	2,975	3,963
Total	6,206	6,259	6,589	7,992	16,374
High School Districts	Less than $36,000	36,000 - 43,780	43,781 - 50,266	43,782- 67,400	Greater than 67,400
Local G.O. Bonds	4,036	4,933	7,205	8,504	17,102
State G.O. Bonds	4,323	5,813	3,344	4,455	5,520
Total	10,196	13,136	12,366	16,135	24,186

* Quintiles are weighted by student enrollment

Table 12
Distribution of Revenue per Pupil by Quintiles of Assessed Value per Pupil*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than $367	367.1 - 467.9	468 - 508	508.1 - 800	Greater than 800
Local G.O. Bonds	2,053	3,304	4,960	4,155	6,535
State G.O. Bonds	3,438	3,976	3,403	3,634	3,636
Total	6,889	9,200	10,277	9,702	13,507
Elementary Districts	Less than $330	330 - 518	518.1 - 685	685.1 - 1,140	Greater than 1,140
Local G.O. Bonds	757	1,443	1,727	1,449	8,524
State G.O. Bonds	3,766	3,722	4,153	2,967	2,885
Total	5,219	6,009	6,954	5,852	13,602
High School Districts	Less than $910	910 - 1,115	1,115.1 - 1,380	1,380.1 - 2,200	Greater than 2,200
Local G.O. Bonds	4,333	5,826	6,599	6,072	13,416
State G.O. Bonds	5,481	4,803	4,324	5,164	4,297
Total	11,983	12,172	13,166	13,059	20,156

* (1) Quintiles are weighted by student enrollment, (2) Assessed Value per Pupil is in 1,000 of dollars

Figure 5
Assessed Value per Pupil (2005) and Local G.O. Bond Revenue per Pupil

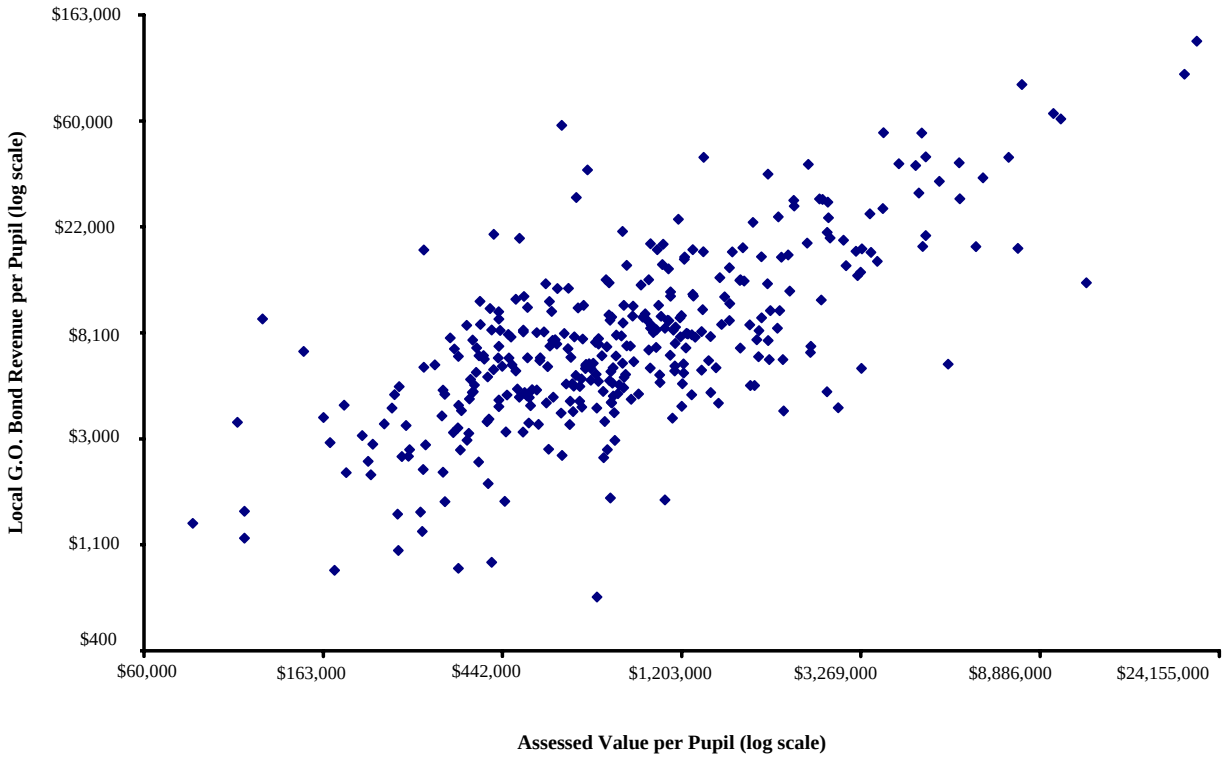

Table 13
Distribution of Revenue per Pupil by Quintiles of Percentage of Minority Students *

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than 45.0%	45.0% - 68.4%	68.5% - 83.4%	83.5% - 91.0%	Greater than 91.0%
Local G.O. Bonds	4,166	4,110	3,666	4,644	3,637
State G.O. Bonds	3,154	3,871	3,406	4,122	3,768
Total	9,556	10,364	9,469	9,944	8,821
Elementary Districts	Less than 38.0%	38.0% - 61.2%	61.3% - 77.5%	77.6% - 91.5%	Greater than 91.5%
Local G.O. Bonds	3,795	2,400	2,586	4,436	2,425
State G.O. Bonds	3,556	3,471	2,995	3,201	3,031
Total	8,791	7,840	6,918	9,001	6,215
High School Districts	Less than 44.0%	44.0% - 62.2%	62.3% - 71.0%	71.1% - 85.3%	Greater than 85.3%
Local G.O. Bonds	5,799	9,771	8,862	5,639	6,865
State G.O. Bonds	4,881	4,358	5,756	3,934	5,027
Total	12,836	16,483	18,480	10,935	12,987

* Quintiles are weighted by student enrollment

Table 14
Regression Estimates
Coefficient/(Standard Error)

Variable	Total Revenue per Pupil	Bond Revenue per Pupil	Probability of a Successful Bond Election
Assessed Value per Pupil	0.56**	0.77**	0.62**
	(0.13)	(0.06)	(0.14)
Income	0.27	0.20*	-0.21
	(0.24)	(0.11)	(0.29)
Enrollment Growth	0.76**	0.17*	0.24
	(0.19)	(0.09)	(0.21)
Prior Investment	-0.46**	-0.06	-0.64**
	(0.14)	(0.06)	(0.16)
Percent Minority	-0.03	0.57**	0.70**
	(0.07)	(0.13)	(0.32)
Total Enrollment	0.53**	-0.05**	0.54**
	(0.05)	(0.02)	(0.07)
Elementary District	0.08	-0.29**	-0.38**
	(0.15)	(0.07)	(0.19)
High School District	0.16	-0.17	-0.06
	(0.23)	(0.11)	(0.31)
Constant	-2.11	-2.25**	-4.95*
	(2.26)	(1.10)	(2.85)
R-Squared	0.28	0.57	0.19
Observations	904	386	904

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 15
Predicted Total Revenue per Pupil

Variable	Predicted Revenue 25th Percentile	Predicted Revenue 75th Percentile	75th - 25th
Enrollment Growth	3,144	3,741	597
Prior Investment	4,218	3,016	-1,201
Assessed Value per Pupil	2,590	4,654	2,064
Income	3,283	3,802	519
Fraction Minority	3,586	3,525	-61

Table 16
Critically Overcrowded and Multi-Track Schools, 2004-05

	All Schools		Other than LA Unified		LA Unified	
	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools
All	16	22	7	14	78	79
White	5	9	3	8	54	55
African American	22	30	12	22	70	71
Hispanic	23	30	10	18	83	84
Nonwhite	21	27	10	17	80	81
Free/Reduced Price Lunch	24	31	11	19	82	83

Table 17
Characteristics of Critically Overcrowded and Multi-Track Schools, 2004-05

	All Schools		Other than LA Unified		LA Unified	
	Critically Overcrowded or Multi-Track Schools	All Other Schools	Critically Overcrowded or Multi-Track Schools	All Other Schools	Critically Overcrowded or Multi-Track Schools	All Other Schools
White	13.2%	36.4%	18.4%	36.9%	6.2%	19.0%
African American	11.0	7.1	11.4	6.7	10.4	15.9
Hispanic	65.3	41.7	56.0	41.3	77.7	54.9
Nonwhite	86.8	63.6	81.6	63.0	93.8	81.0
Free/Reduced Price Lunch	73.2	45.2	64.7	44.7	84.5	63.7

Table 18
Facility Revenue per Pupil, Critically Overcrowded and Multi-Track Schools

Revenue Source	Districts with Critically Overcrowded Schools	Districts with Critically Overcrowded or Multi-Track Schools	All Other Districts	Los Angeles Unified
Local G.O. Bonds	5,722	4,223	3,825	16,883
State Aid	3,974	4,133	3,495	2,860
Total	11,323	10,459	9,061	20,270
COS Preliminary Apportionment	531	228	…	3,761
Number of Districts	46	107	855	1

Table 19
Charter School Facility Program Grant Amounts and Caps on Funding

Per-Pupil Grant Amounts

Type of Student	Per-Pupil Grant
Elementary	$5,870
Middle School	$6,214
High School	$8,116
Special Day Class – Non-Severe	$12,509
Special Day Class – Severe	$18,703

Limit on Number of Pupil Grants Requested

Type of School	Maximum Number of Students Funded per Project
Elementary	350
Middle School	450
High School	600

Limit on Amount of Funding by Geography

Type of School	Total Project Funding ($ million)
Non-Urban Elementary	5
Non-Urban Middle School	7
Non-Urban High School	10
Urban Elementary	6.6
Urban Middle School	9
Urban High School	12.9

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Appendix

Table 1A
Regression Estimates: Total Revenue per Pupil
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.69** (0.21)	0.56** (0.17)	-0.31 (0.33)
Income	-0.55 (0.51)	0.56* (0.29)	1.40** (0.63)
Enrollment Growth	1.24** (0.37)	0.49** (0.23)	3.28** (1.39)
Prior Investment	-0.39* (0.22)	-0.43** (0.18)	-1.46** (0.46)
Percent Minority	0.08 (0.51)	-0.07 (0.08)	-0.19 (0.16)
Total Enrollment	0.51** (0.10)	0.57** (0.07)	0.16 (0.19)
Constant	4.39 (5.34)	-5.61** (2.68)	10.12** (3.77)
R-Squared	0.26	0.25	0.38
Observations	307	517	80

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 2A
Regression Estimates: Local G.O. Bond Revenue per Pupil
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.62**	0.75**	0.69**
	(0.09)	(0.07)	(0.20)
Income	0.02	0.28*	0.24
	(0.16)	(0.15)	(0.38)
Enrollment Growth	0.21**	0.10	0.98
	(0.10)	(0.16)	(0.59)
Prior Investment	-0.06	-0.08	-0.21
	(0.10)	(0.09)	(0.20)
Percent Minority	0.38	0.51**	0.91**
	(0.24)	(0.18)	(0.34)
Total Enrollment	0.05	-0.12**	-0.11
	(0.04)	(0.03)	(0.07)
Constant	0.08	-3.29**	-1.05
	(1.78)	(1.47)	(3.54)
R-Squared	0.35	0.71	0.48
Observations	178	160	48

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 3A
Regression Estimates: Probability of a Successful Bond Election
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.51**	0.75**	-0.22
	(0.23)	(0.19)	(0.70)
Income	-0.79	-0.03	0.71
	(0.49)	(0.39)	(1.35)
Enrollment Growth	0.34	0.12	3.81*
	(0.37)	(0.26)	(2.13)
Prior Investment	-0.59**	-0.68**	-1.42*
	(0.28)	(0.20)	(0.77)
Percent Minority	0.33	0.80*	0.24
	(0.58)	(0.42)	(0.57)
Total Enrollment	0.51**	0.57**	0.53*
	(0.11)	(0.09)	(0.32)
Constant	2.88	-8.91	4.13
	(4.82)	(3.74)	(11.70)
R-Squared	0.09	0.19	0.23
Observations	307	517	80

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level