ITEM 4

TEST CLAIM
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Education Code Sections 88, 1240, 1242, 1242.5, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 17592.70, 17592.71, 17592.72, 17592.73, 32228.6, 33126, 33126.1, 35186, 41020, 41207.5, 41344.4, 41500, 41501, 41572, 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 48642, 49436, 52055.625, 52055.640, 52055.662, 52059, 52295.35, 56836.165, 60119, 60240, 60252, 62000.4; California Code of Regulations Title 5, Sections 4600-4671; Title 2, Sections 1859.300-1859.330; Executive Orders, Office of Public School Construction/State Allocation Board: Certification of Eligibility, Interim Evaluation Instrument, Needs Assessment Report, Needs Assessment Report Worksheet, Expenditure Report, Application for Reimbursement and Expenditure Report, Web-Base Progress Report Survey, Web-Based Needs Assessment.
Statutes 2004, Chapter 899 (SB 6); Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); Statutes 2007, Chapter 526 (AB 347).

Williams Implementation Statutes: Williams I, II, III

05-TC-04; 07-TC-06; 08-TC-01

San Diego County Office of Education, Sweetwater Unified High School District, Claimants

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SixTen and Associates
Mandate Reimbursement Services

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September 16, 2005

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

Re: Test Claim of San Diego County Office of Education
and the Sweetwater Union High School District
Statutes of 2004, Chapters 899
Williams Case Implementation

Dear Ms. Higashi:

Enclosed is the original and seven copies of the above referenced test claim.

I have been appointed by the test claimants as their representative for this test claim. The test claimants request that all correspondence originating from your office and documents subject to service by other parties be directed to me, with a copy to:

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7399

Dianne L. Russo, Interim Chief Fiscal Officer
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896

This test claim is filed with the endorsement of the Education Mandated Cost Network, so Robert Miyashiro, EMCN Consultant, and Michael Johnston, EMCN Chair, should be included as interested parties for future correspondence. I have already provided them copies of the test claim material.

The following state agencies may have an interest in this test claim:

State Department of Education
State Allocation Board
Office of Public School Construction

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education
Dianne L. Russo, Interim Chief Fiscal Officer
Sweetwater Union High School District
Michael Johnston, Assistant Superintendent, Clovis Unified School District
Robert Miyashiro, School Services of California

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

1. TEST CLAIM TITLE

Williams Case Implementation

2. CLAIMANT INFORMATION

San Diego County Office of Education
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E-Mail: dianne.russo@suhsd.k12.ca.us

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605
Fax: (858) 514-8645
E-mail: Kbpsixten@aol.com

Filing Date:

Test Claim #: 05-TC-04

4.TEST CLAIM STATUTES OR EXECUTIVE ORDERS

Statutes of 2004, Chapter 899 (SB 6), effective September 29, 2004: Education Code Sections 17592.70 17592.71 17592.72 17592.73 41207.5

Statutes of 2004, Chapter 900 (SB 550), effective September 29, 2004: Education Code Sections 1240 14501 17002 17014 17032.5 17070.15 17070.75 17087 17089 33126 33126.1 35186 41020 41344.4 52055.625 52055.640 52055.662 60119 60240 60252 62000.4

Statutes of 2004, Chapter 902 (AB 3001), effective September 29, 2004: Education Code Sections 42127.6 44225.6 44258.9 44274 44275.3 44325 44453 44511 52055.640 52059

Statutes of 2004, Chapter 903 (AB 2727), effective September 29, 2004: Education Code Section 35186

Statutes of 2005, Chapter 118 (AB 831), effective July 25, 2005: Education Code Sections 88 1240 17592.70 32228.6 35186 41500 41501 41572 44258.9 48642 49436 52055.640 52295.35 56836.165 60119

REGULATIONS
Title 5, CCR, Sections 4600-4671
Title 2, CCR, Sections 1859.300-1859.329

EXECUTIVE ORDERS
Office of Public School Construction/ State Allocation Board

Certification of Eligibility
Interim Evaluation Instrument
Needs Assessment Report, SAB 61-01
Needs Assessment Report Worksheet
Expenditure Report, SAB 61-02
Application For Reimbursement and Expenditure Report, SAB 61-03
Web-Based Progress Report Survey
Web-Based Needs Assessment

__ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages ____ to ____
6. Declarations: pages ____ to ____
7. Documentation: pages ____ to __

LIST OF TEST CLAIM DOCUMENTS

Document		Pages	Total Pages
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7. Documentation	See Exhibits A through E		
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SDCOE FY 2004-05 Estimated Cost-Hours		1-3	3
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Exhibit E STATEWIDE COST ESTIMATE		
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SDE List of Decile 1-3 Schools by County	1	1
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5. WRITTEN NARRATIVE

This test claim alleges mandated costs reimbursable by the state for school districts and county offices of education ("school districts") to implement the legislation which resulted from the settlement of the "Williams" court case. The *Eliezer Williams, et al., vs. State of California, et al.* case was filed as a class action suit in 2000 in San Francisco County Superior Court. The plaintiffs included nearly 100 San Francisco school district students, who filed suit against the State of California and state education agencies, including the California Department of Education. The basis of the lawsuit was that the agencies failed to provide public school students with equal access to instructional materials, safe and decent school facilities, and qualified teachers. The case was settled in 2004, and the settlement implemented by the following legislation, effective as a matter of urgency on September 29, 2004: SB 6, SB 550, AB 1550, AB 2727, AB 3001.

The statutes, Education and other Code sections, regulations, and the executive orders of the Office of Public School Construction and State Allocation Board, referenced in this test claim result in school districts and county offices of education incurring costs mandated by the state, as defined in Government Code section 17514, by creating new state-mandated duties related to the uniquely governmental function of providing services to the public and these statutes apply to school districts and do not apply generally to all residents and entities in the state. County offices of education (the County Superintendent of Schools) incur costs mandated by the state in two capacities: for the required monitoring and oversight of school districts within the

jurisdiction of the county offices of education which implement the Williams Case, as well as in their capacity as a local education agency which operates schools as a "school district."

PART A. ACTIVITIES AND COSTS

SECTION 1. STATUTORY MANDATES

Statutes of 2004, Chapter 899, Senate Bill 6

Statutes of 2004, Chapter 899, Senate Bill 6, effective September 29, 2004 as a matter of urgency: adds Section 41207.5 to, and adds Article 1.5 (commencing with Section 17592.70) to Chapter 5 of Part 10.5 of, the Education Code, relating to school facilities, and makes an appropriation therefor.

Legislative Digest

Existing law requires the governing board of any school district to furnish and repair the school property of its district and authorizes each school district to establish a restricted fund, known as the district deferred maintenance fund, for the purpose of major repair or replacement of specified items. Existing law requires the State Allocation Board to apportion from the State School Deferred Maintenance Fund, to eligible school districts, an amount equal to $1 for each $1 of local funds deposited in the district's Deferred maintenance fund.

This statute:

Establishes the School Facilities Needs Assessment Grant Program, to be administered by the State Allocation Board, for the purpose of awarding grants to

school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, as specified, to conduct a one-time comprehensive assessment of school facilities needs.

Establishes in the State Treasury the School Facilities Emergency Repair Account, to be administered by the State Allocation Board, for the purpose of reimbursing school districts with schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, for emergency facility repairs.

Requires the State Allocation Board, for purposes of the above new program and account, to adopt regulations, establish and publish procedures and policies for their administration, apportion funds to eligible school districts, provide technical assistance to school districts, and make specified reports to the Governor and the Legislature.

Establishes in the General Fund the Proposition 98 Reversion Account and requires the Legislature to transfer into this account moneys previously appropriated in satisfaction of the requirements of Section 8 of Article XVI of the California Constitution that have not been disbursed or otherwise encumbered for the purposes for which they were appropriated.

Requires moneys that are appropriated in satisfaction of the minimum funding obligation under Section 8 of Article XVI of the California Constitution that would otherwise revert to the unexpended balance of the General Fund to be instead deposited in this new account.

Appropriates $250,000 from the General Fund to the State Allocation Board for the administration of the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Account for the 2004-05 fiscal year.

Appropriates $30,000,000 from the General Fund, of which $25,000,000 is to be appropriated to the State Department of Education for transfer to the State Allocation Board for grants to school districts under the School Facilities Needs Assessment Grant Program and $5,000,000 is to be appropriated for transfer to the School Facilities Emergency Repair Account. Requires the Controller to transfer those funds, as provided, upon receipt of certification from the Office of Public School Construction. Provides that for the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation is General Fund revenues appropriated for school districts for the 2003-04 fiscal year.

States that the intent of the Legislature in enacting this act is to implement the settlement agreement in the case of Williams v. State of California.

Declares that it is to take effect immediately as an urgency statute.

Activities and Costs

Education Code Section 17592.70

Education Code Section 17592.70 (d), as added by Statutes of 2004, Chapter 899 requires school districts, as a condition of receiving the School Facilities Needs Assessment Grant Program funds, to:

1 Use the funds to develop a comprehensive needs assessment, as defined in

Section 17592.70 (d)(1), of eligible schoolsites, utilizing data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or utilizing information that is available in the California Basic Education Data System.

2 Use the comprehensive needs assessment as baseline data for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

3 Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment, as soon as possible, but not later than January 1, 2006.

4 Expend the remaining funds not needed for the assessment for making facilities repairs identified in its needs assessment and report to the Office of Public School Construction on the repairs completed and the cost of the repairs.

5 Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible schools.

Education Code Section 17592.72

Education Code Section 17592.72, as added by Statutes 2004, Chapter 899, requires school districts, as a condition of receiving the School Facilities Emergency Repair Account funds, to:

(1) Exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

(2) Supplement, not supplant, existing funds available for maintenance of school facilities.

(3) Use the funds for "emergency facilities needs" which means repair or replacement of structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school, and not for cosmetic or nonessential repairs.

Education Code Section 17592.73

Education Code Section 17592.73, as added by Statutes of 2004, Chapter 899, requires school districts, as a condition of receiving the funds provided by the statute, to comply with the regulations adopted by the State Allocation Board for the administration of the funds, including those which specify the qualifications of the personnel performing the needs assessment and a method to ensure their independence.

Un-codified Requirements

Section 5, Statutes of 2004, Chapter 899, requires school districts and county offices of education to use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations.

Statutes of 2004, Chapter 900, Senate Bill 550

Statutes of 2004, Chapter 900, Senate Bill 550, effective September 29, 2004 as

a matter of urgency: amends Sections 1240, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 33126, 33126.1, 41020, 52055.625, 52055.640, 60119, 60240, and 60252 of the Education Code: adds Sections 35186, 41344.4, and 52055.662 to the Education Code: repeals Section 62000.4 of the Education Code; and, amends Section 36 of Chapter 216 of the Statutes of 2004, relating to education, making an appropriation therefor.

Legislative Digest

(1) Existing law requires a county superintendent of schools, among other things, to visit and examine each school in the county to observe its operation and learn of its problems. Existing law authorizes the county superintendent to annually present a report on the state of the schools in the county to the board of education and the board of supervisors of the county.

This statute:

Requires the county superintendent to annually present a report to the governing board of each school district under his or her jurisdiction and to the board of supervisors of the county describing the state of the schools in the county and of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, thereby imposing a state-mandated local program.

Requires the county superintendent for the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco to contract with a neighboring county office of education or an independent auditor to conduct the

required visits and make all required reports.

Makes the priority objective of the visits to determine if there are sufficient textbooks, conditions of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff, and accurate data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, the safety, cleanliness, adequacy, and good repair of school facilities.

(2) Existing law requires a county superintendent of schools, among other things, to enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

This statute:

Requires the county superintendent, for purposes of enforcing the use of required textbooks and instructional materials, to specifically review at least annually schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index and that are not currently under review through a state or federal intervention program, thereby imposing a state-mandated local program.

If the county superintendent determines that a school does not have sufficient textbooks or instructional materials, the county superintendent is required to prepare a report that identifies and documents the areas or instances of noncompliance, provide a copy of the report to the school district, forward the report to the Superintendent of Public Instruction, and provide the school district with the opportunity to remedy the deficiency.

If the deficiency is not remedied, requires the county superintendent to request the State Department of Education, with approval by the State Board of Education, to purchase textbooks or instructional materials for the school.

Requires that the funds necessary for the purchase be considered a loan to the school district to be repaid based upon an agreed-upon schedule with the Superintendent of Public Instruction, or by deducting an amount from the district's next principal apportionment or other apportionment of state funds.

Authorizes the State Department of Education to expend up to $5,000,000 from the State Instructional Materials Fund to acquire instructional materials for school districts for purposes of these provisions.

(3) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, the Leroy F. Greene State School Building Lease-Purchase Law of 1998, and the State Relocatable Classroom Law of 1979, requires the State Allocation Board to require a school district that receives funds for a school construction or modernization project pursuant to those laws, to make all necessary repairs, renewals, and replacement, to ensure that a project is at all times kept in good repair, working order, and condition.

Existing law requires the State Allocation Board to establish the annual rent and conditions to be met by a school district to which it leases portable classrooms and requires a school district to undertake all necessary repairs, renewals, and replacement, to ensure that those portable classrooms are at all times kept in good

repair, working order, and condition.

This statute requires as a condition of participation in the Leroy F. Greene State School Building Lease-Purchase Law of 1976, the Leroy F. Greene State School Building Lease-Purchase Law of 1998, and the State Relocatable Classroom Law of 1979, and the receipt of funds pursuant to the deferred maintenance program, a school district to establish a facilities inspection system to ensure that each of its schools is in good repair, as defined in the bill.

(4) Existing law requires the Controller, in consultation with the Department of Finance and the State Department of Education, to develop a plan to review and report on financial and compliance audits, and with representatives of other entities, to recommend the statements and other information to be included in the audit reports filed with the state by local educational agencies and to propose the content of an audit guide.

This statute requires a Controller's compliance audit to include the verification of the reporting requirements for the sufficiency of textbooks and instructional materials, teacher misassignments, and the accuracy of information reported on the school accountability report card.

(5) Existing law, the Classroom Instructional Improvement and Accountability Act, requires each school district to develop and implement a school accountability report card, as prescribed. The existing act prohibits any change to its provisions, except a change to further its purpose enacted by a bill passed by a vote of 2/3 of the

Legislature and signed by the Governor.

Existing law requires the State Department of Education to develop and recommend for adoption a standardized template for the school accountability report card and requires the standardized template to include fields for the insertion of data and information by the department and by local educational agencies.

This statute:

Requires the school accountability report card to include information regarding the availability of sufficient textbooks and other instructional materials for each pupil, any needed maintenance of school facilities to ensure good repair, the misassignments of teachers, including misassignments of English learner teachers, and the number of vacant teacher positions for the most recent 3-year period.

Imposes a state-mandated local program.

Provides that if the Commission on State Mandates finds a school district eligible for the reimbursement of costs incurred in complying with the requirements regarding the school accountability report card, the school district is to be reimbursed only if the information provided in the school accountability report card is accurate, as determined by a specified annual audit, or if the information is determined to be inaccurate, the information is corrected by May 15.

Requires that the state template to also include a field to report the determination of the sufficiency of textbooks and instructional materials and a summary statement of the condition of school facilities.

Requires the department to provide examples of summary statements of the condition of school facilities that are acceptable and those that are unacceptable.

Declares that these provisions further the purposes of the Classroom Instructional Improvement and Accountability Act.

(6) Existing regulations require each local educational agency to adopt policies and procedures for the investigation and resolution of complaints and require each local educational agency to include in its policies and procedures the person, employee, or agency position or unit responsible for receiving complaints, investigating complaints, and ensuring local educational agency compliance.

This statute:

Requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment.

Requires a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage.

Imposes a state-mandated local program.

(7) Existing law requires a county superintendent of schools to provide for an audit of all funds under his or her jurisdiction and requires the governing board of a local

educational agency to either provide for an audit of the books and accounts of the local educational agency or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing.

Existing law requires a county superintendent of schools to be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions were either corrected or an acceptable plan of correction was developed.

This statute:

Commencing with the 2004-05 audit of local educational agencies, requires the county superintendent of schools to include in the review of audit exceptions those audit exceptions related to use of instructional materials program funds, teacher misassignments, and information reported on the school accountability report card and to determine whether the exceptions are either corrected or an acceptable plan of correction developed, thereby imposing a state-mandated local program.

Prohibits a local educational agency from being required to repay an apportionment based on a significant audit exception related to the verification of the sufficiency of textbooks and instructional materials, teacher misassignments, and the accuracy of the information reported on the school accountability report card if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception was corrected or that an acceptable plan of

correction was submitted to the county superintendent of schools.

(8) Existing law establishes, within the Public Schools Accountability Act of 1999, the High Priority Schools Grant Program and requires a school district participating in the program to develop a school action plan that includes four components: (a) pupil literacy and achievement, (b) quality of staff, (c) parental involvement, and (d) facilities, curriculum, instructional materials, and support services.

Existing law requires that a school receiving funds under the High Priority Schools Grant Program submit a report to the Superintendent of Public Instruction that includes, among other things, the availability of instructional materials in core content areas that are aligned with the academic content and performance standards for each pupil.

This statute:

For schools initially applying to participate in the Public Schools Accountability Act of 1999 or the High Priority Schools Grant Program on or after the 2004-05 fiscal year, require the component of the school action plan on quality of staff to include highly qualified teachers and appropriately credentialed teachers for English learners.

Requires the component on facilities, curriculum, instructional materials, and support services for those schools be on facilities in good repair, curriculum, sufficient instructional materials, and support services.

Requires schools to measure the availability of instructional materials against a specified definition of "sufficient instructional materials."

(9) Existing law requires the governing board of a school district to hold a public hearing and make a determination as to whether each pupil in each school in the district has or will have prior to the end of that fiscal year sufficient textbooks or instructional materials in each subject that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education.

This statute:

Requires the governing board of a school district to hold a public hearing and make a determination as to whether each pupil in each school in the district has sufficient textbooks or instructional materials in each subject that are consistent with the content and cycles of the curriculum frameworks.

Requires the hearing to be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and would prohibit the hearing from taking place during or immediately following schoolhours.

Defines "sufficient textbooks or instructional materials" to mean that each pupil, including English learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments but would specify that two sets of textbooks or instructional materials for each pupil are not required.

(10) Existing law repeals the Instructional Materials Program on June 30, 2006, and makes implementation of the program during the 2002-03 to 2005-06 fiscal years, inclusive, contingent on funding in the annual Budget Act.

This statute deletes the repeal of the Instructional Materials Program on June 30, 2006, and the repeal of the annual Budget Act implementation contingency for the program during the 2002-03 to 2005-06 fiscal years, inclusive.

(11) Existing law appropriated $138,000,000 from the General Fund to the State Department of Education for transfer to the Instructional Materials Fund.

This statute makes technical changes to that appropriation and other conforming changes.

(12) This statute appropriates $20,200,000 from the General Fund to the State Department of Education and, of that amount $5,000,000 to be appropriated for transfer to the State Instructional Materials Fund for purposes of acquiring instructional materials, as specified, $15,000,000 to be appropriated for allocation to county offices of education for review and monitoring of schools, as specified, and $200,000 to be appropriated for purposes of implementing this act. The funds appropriated are to be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(13) This statute states that the intent of the Legislature in enacting this act is to implement the settlement agreement in the case of Williams v. State of California.

(14) This statute provides that, if the Commission on State Mandates determines that this legislation contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the State Mandates Claim Fund.

(15) This statute declares that it is to take effect immediately as an urgency statute.

Activities and Costs

Education Code Section 1240

Education Code Section 1240 (c)(1) required the county superintendent of schools to visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

Education Code Section 1240 (c)(2), as amended by Statutes of 2004, Chapter 900, requires the county superintendent of schools, or his or her designee, to the extent that funds are appropriated for purposes of this paragraph, to annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county, describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, of his or her observations while visiting the schools, among other things.

Education Code Section 1240 (c) (2), as amended by Statutes of 2004, Chapter 900, requires the county superintendents of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco to contract with another county office of education or an independent auditor to conduct the required

visits and make all reports required by this paragraph.

Education Code Section 1240 (c) (2), as amended by Statutes 2004, Chapter 900, requires the county superintendent to report the results of the visit to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

Education Code Section 1240 (c) (2), as amended by Statutes of 2004, Chapter 900, requires the county superintendent to conduct the visits made pursuant to this paragraph at least annually, that the visits not disrupt the operation of the school, that the visits be performed by individuals who meet the requirements of Section 45125.1, and that not less than 25 percent of the visits be unannounced visits which shall only be used to observe the condition of school repair and maintenance and the sufficiency of instructional materials, as defined by Section 60119.

Education Code Section 1240 (c) (2), as amended by Statutes of 2004, Chapter 900, requires the county superintendent to make the priority objective of the visits made pursuant to this paragraph to be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

Education Code Section 1240 (i) previously required the county superintendent of schools to enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority. Education Code Section 1240 (i), as amended by Statutes of 2004, Chapter 900, requires the county superintendent of schools to enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority, as defined in subdivision (c) of Section 60119.

Education Code Section 1240 (i), as amended by Statutes of 2004, Chapter 900, requires the county superintendent, in the case of a school ranked in any of deciles 1 to 3, inclusive and not currently under review through a state or federal intervention program, to specifically review that school at least annually and within the first four weeks of the school year as a priority school. For the 2004-05 fiscal year only, the county superintendent is required to make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

Education Code Section 1240 (i), as amended by Statutes of 2004, Chapter 900, requires the county superintendent, if it is determined that a school does not have

sufficient textbooks or instructional materials, to do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the Department of Education, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision.

Education Code Section 1240 (i), as amended by Statutes of 2004, Chapter 900,

requires the school districts to, before purchasing the textbooks or instructional materials as a result of the deficiency determined by the county superintendent, consult with the State Department of Education to determine which textbooks or instructional materials to purchase which comply with Chapter 3.25 (commencing with Section 60420) of Part 33.

Education Code Section 1240 (i), as amended by Statutes of 2004, Chapter 900, requires school districts to accept the amount of funds necessary to the purchase the textbooks and materials as a loan to the school district and repay the amount owed based upon an agreed-upon repayment schedule with the Superintendent of Public Instruction.

Education Code Section 14501

Education Code Section 14501 made local education agencies subject to financial and compliance audits. Education Code Section 14501, as amended by Statutes of 2004, Chapter 900, requires school districts to provide to auditors evidence of compliance of the following increased scope of activities:

(1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.

(2) Teacher misassignments pursuant to Section 44258.9.

(3) The accuracy of information reported on the School Accountability Report Card required by Section 33126. The requirements set forth in paragraphs (1) and (2) and this paragraph shall be added to the audit

guide requirements pursuant to subdivision (b) of Section 14502.1.

Education Code Section 17070.75

Education Code Section 17070.75 specifies the fund accounting procedures required for school districts in order to participate in state deferred maintenance funding matches. Education Code Section 17070.75 (e), as amended by Statutes of 2004, Chapter 900, requires the local education agency to, as a condition of participation in the school facilities program or the receipt of funds pursuant to Section 17582, for a fiscal year after the 2004-05 fiscal year, establish a facilities inspection system to ensure that each of its schools is maintained in good repair.

Education Code Section 33126

Education Code Section 33126 specifies the content of the School Accountability Report Card. Education Code Section 33126 (b), as amended by Statutes of 2004, Chapter 900, requires school districts to provide the following new information:

1 The total number of teacher misassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

2 The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics,

science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

3 A statement regarding any needed maintenance of the school to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

Education Code Section 33126 (c), as added by Statutes of 2004, Chapter 900, requires the school district to provide accurate school accountability report card information in order to be eligible for reimbursement.

Education Code Section 35186

Title 5 of the California Code of Regulations, Chapter 5.1 (commencing with Section 4600), requires school districts to utilize a uniform complaint process. Education Code Section 35186, as added by Statutes of 2004, Chapter 900, requires school districts to modify the uniform complaint process it has adopted to include complaints regarding instructional materials, facility condition, and teacher misassignment, so that the new process provides that:

(1) A complaint may be filed anonymously and a complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. The complaint form shall specify the location for filing a complaint and allow the complainant to add as much text to explain the complaint as he or

she wishes. A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(2) The principal or the designee of the district superintendent or designee shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same time frame to the designee of the district superintendent.

(3) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall

provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(4) The school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(5) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district before January 1, 2005, notifying parents and guardians of the following:

(A) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, every student must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(B) School facilities must be clean, safe, and maintained in good repair.

(C) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the

department shall satisfy this requirement.

Education Code Section 41020

Education Code Section 41020 requires county superintendents of schools to review the audit exceptions contained in an audit of a school district related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determine whether the exceptions have been either corrected or an acceptable plan of correction has been developed. Education Code Section 41020, as amended by Statutes of 2004, Chapter 900, requires at subdivision (i) (2), that commencing with the 2004-05 school year, the review include those audit exceptions related to the use of instructional materials program funds, teacher misassignments, information reported on the school accountability report card, which determines whether the exceptions are either corrected or an acceptable plan of correction has been developed.

Education Code Section 41020, as amended by Statutes of 2004, Chapter 900, at subdivision (i) (2), with respect to these additional audit exceptions, requires school districts to prepare and implement a plan of correction.

Education Code Section 41344.4

Education Code Section 41344.4, as added by Statutes of 2004, Chapter 900, requires county superintendents of schools to certify to the Superintendent of Public Instruction and the Controller whether the audit exceptions related to the requirements specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 14501, were corrected by the local educational agency or that an acceptable plan of correction was

submitted to the county superintendent of schools pursuant to subdivision (k) of Section 41020.

Education Code Section 60119

Education Code Section 60119 establishes the eligibility requirements for the Pupil Textbook and Instructional Materials Incentive Program. Education Code Section 60119, subdivision (a) and (b), as amended by Statutes of 2004, Chapter 900, requires school districts to perform the following additional activities in order to establish eligibility:

(1) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, or both, as defined by this section, in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History-social science.

(iv) English/language arts, including the English language development component of an adopted program.

(2) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004-05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(3) The governing board shall also make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(4) The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

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Education Code Section 60252

Education Code Section 60252 establishes the compliance requirements for the Pupil Textbook and Instructional Materials Incentive Program. Education Code Section 60252, as amended by Statutes of 2004, Chapter 900, requires school districts to ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.

Statutes of 2004, Chapter 902, Assembly Bill 3001

Statutes of 2004, Chapter 902, Assembly Bill 3001, effective September 29, 2004, as a matter of urgency, amends Sections 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 52055.640, and 52059 of the Education Code, relating to teachers.

Legislative Digest

(1) Existing law requires the county superintendent of schools to report to the Superintendent of Public Instruction on the financial condition of a school district if the county superintendent determines a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification. Existing law requires the county superintendent to take at least one of certain actions and all actions that are necessary to ensure that the district meets its financial obligations.

This statute:

Requires the county superintendent of schools after a determination that a

school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification, take specified actions that are necessary to ensure that the district meets its financial obligations, to include assigning the Fiscal Crisis and Management Assistance Team to review district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment and also to provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers.

Requires a school district that is assigned this review to follow the recommendations made unless it shows good cause for failure to do so.

(2) Existing law requires the Commission on Teacher Credentialing to report, by April 15 of each year, to the Legislature and the Governor on the number of classroom teachers who received credentials, internships, and emergency permits in the previous fiscal year. The report is required to include specified information.

This statute expands the content of the Commission on Teacher Credentialing April 15 report to the Legislature and the Governor on the number of classroom teachers who received credentials, internships, and emergency permits in the previous fiscal year.

(3) Existing law requires the county superintendent of schools to annually monitor and review school district certificated employee assignment practices according to

certain priorities with first priority going to schools and school districts that are likely to have problems with teacher misassignment and teacher vacancies based on past experience or other available information. Existing law requires a county superintendent of schools to submit an annual report to the Commission on Teacher Credentialing summarizing the results of all assignment monitoring and reviews. This statute:

Requires the county superintendent of schools to give priority to schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, as defined, if those schools are not currently under review through a state or federal intervention program.

Requires a county superintendent of schools to investigate school and district efforts to ensure that any credentialed teacher in an assignment requiring a certificate authorizing the holder to teach English language development to English learners or training that authorizes the holder to teach English language development to English learners completes the necessary requirements for one of those certificates or completes the required training.

Requires the annual report from the county superintendent of schools to the Commission on Teacher Credentialing summarizing the results of assignment monitoring and reviews to the department include information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, as defined, to ensure that in any classes in these schools in which 20% or more of the pupils are English learners, that the assigned teachers possess a

certificate authorizing the holder to teach English language development to English learners or have completed training that would authorize them to teach English language development to English learners or are otherwise authorized by law to do so, thus imposing a state-mandated local program.

Requires the Superintendent of Public Instruction to submit a summary of the reports submitted by county superintendents of schools to the Legislature and requires the Legislature to hold public hearings on pupil access to teachers and to related statutory provisions.

(4) Existing law requires the Commission on Teacher Credentialing to grant an appropriate credential to an applicant from another state who completes teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California if the applicant has met the requirements of California for the basic skills proficiency test and teacher fitness.

This statute deletes the basic skills proficiency test requirement for the granting of a teaching credential if the Commission on Teacher Credentialing determines, as specified, that the applicant has met a comparable requirement.

(5) Existing law requires an out-of-state prepared teacher who is issued a California 5-year preliminary multiple subject, single subject, or education specialist teaching credential to pass the state basic skills proficiency test, administered by the Commission on Teacher Credentialing, within one year of the issuance date of the credential in order to be eligible to continue teaching.

This statute deletes the requirement, where the Commission on Teacher Credentialing determines, as specified, that an applicant has met a comparable requirement, that an out-of-state prepared teacher who is issued a California 5-year preliminary multiple subject, single subject, or education specialist teaching credential to pass the state basic skills proficiency test within one year of the issuance date of the credential in order to be eligible to continue teaching.

(6) Existing law requires the commission to issue a professional clear credential to an out-of-state prepared teacher who meets certain requirements among which are passing the state basic skills proficiency test administered by the commission and completing the study of health education and of a fifth-year program at a regionally accredited institution of higher education.

This statute:

Deletes the requirements regarding the state basic skills proficiency test and a fifth-year program, where the commission determines, as specified, that the applicant has met comparable requirements, and also deletes the health education requirement.

Requires the Commission on Teacher Credentialing, by June 30, 2005, to report to the Legislature and the Governor on the comparability and equivalency of the preparation of teachers in other states in the areas of basic skills proficiency and fifth year programs.

(7) Existing law establishes university and district teacher intern programs.

This statute requires the Commission on Teacher Credentialing to ensure that

each district and university internship program in California provides program elements to its interns as required by the federal No Child Left Behind Act of 2001 and its implementing regulations.

(8) Existing law establishes the Principal Training Program, administered by the Superintendent of Public Instruction, with the approval of the State Board of Education. Incentive funding is awarded pursuant to the program to provide schoolsite administrators with instruction and training in areas that include, among others, school financial and personnel management and the curriculum frameworks and instructional materials aligned to the state academic standards.

This statute requires that instruction and training include instruction related to personnel management, including hiring, recruitment and retention practices and misassignments of certificated personnel and that instruction and training in the curriculum frameworks and instructional materials aligned to the state academic standard, include ensuring the provision of sufficient textbooks and instructional materials as required by law.

(9) Existing law establishes within the Public Schools Accountability Act of 1999, the High Priority Schools Grant Program and requires a school district that has a school participating in the program to submit a report to the Superintendent of Public Instruction that includes specified information.

This statute requires that, commencing with the 2004-05 fiscal year, for a district with a school initially applying to participate in the program on or after July 2004, the

report include whether at least 80% of the teachers assigned to the school are credentialed and the number of classes in which 20% or more pupils are English learners and assigned to teachers who do not possess a certificate authorizing the holder to teach English language development to English learners or have completed training that would authorize them to teach English language development to English learners or are otherwise authorized by law to do so.

(10) Existing law requires the State Department of Education to establish a statewide system of school support that would provide intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. Existing law requires the system to provide assistance by reviewing and analyzing all facets of a school's operation and by assisting the school in developing recommendations for improving pupil performance and school operations.

This statute:

Requires the review and analysis to include the recruitment, hiring, and retention of principals, teachers, and other staff, including vacancy issues and the roles and responsibilities of district and school management personnel.

Authorizes the system to access the assistance of the Fiscal Crisis and Management Assistance Team to review district or school recruitment, hiring, and retention practices.

Requires the system also to assist schools and districts in efforts to eliminate misassignments of certificated personnel.

(11) This statute declares that the Legislature encourages school districts to provide all the schools it maintains that are ranked in deciles 1 to 3, inclusive, of the Academic Performance Index first priority to review resumes and job applications received by the district from credentialed teachers.

(12) This statute provides that if the Commission on State Mandates determines that this legislation contains costs mandated by the state, reimbursement for those costs shall be made from the State Mandates Claims Fund.

(13) This statute declares that it is to take effect immediately as an urgency statute.

Activities and Costs

Education Code Section 42127.6

Education Code Section 42127.6 is one of several sections which specify the oversight duties of the county office of education for school districts in fiscal distress. Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, requires school districts to provide the county superintendent of schools with a copy of any study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (l) of Section 42127.8.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of

2004, Chapter 902, requires the county superintendent to review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent is required to investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. The county superintendent is then required to report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, authorizes the county superintendent to assign the Fiscal Crisis and Management Assistance Team to review school district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a review team is assigned, the school district is required to follow the

recommendations of the team, unless the district shows good cause for failure to do so.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, requires school districts to provide the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25, to any district employee who provides information regarding improper governmental activity, as defined in Section 44112.

Education Code Section 44258.9

Education Code Section 44258.9 is one of several sections which specify the annual credential review and monitoring duties of the county office of education. Education Code Section 44258.9 subdivision (b), as amended by Statutes of 2004, Chapter 902, requires the county superintendent of schools to:

(1) Give priority to the review of districts with schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, if those schools are not currently under review through a state or federal intervention program.

(2) Investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

Education Code Section 44258.9 subdivision (c), as amended by Statutes of 2004, Chapter 902, requires the county superintendent of schools to identify in its annual report to the Commission on Teacher Credentialing and the State Department of Education summarizing the results of all assignment monitoring and reviews information on certificated employee assignment practices in schools ranked in deciles 1 to 3, the classes in these schools in which 20 percent or more of the pupils are English learners who are assigned a teacher who possesses a certificate issued pursuant to Section 44253.3 or 44253.4 or has completed training pursuant to Section 44253.10 or is otherwise authorized by statute.

Un-codified Requirements

Section 11 (not codified) of Statutes of 2004, Chapter 902, states that it is the intent of the Legislature to require school districts to make resumes and job applications received by the district from credentialed teachers available first to the schools in the district ranked in deciles 1 to 3, and thereafter make the resumes and applications available to other schools maintained by the district.

Statutes of 2004, Chapter 903, Assembly Bill 2727

Statutes of 2004, Chapter 903, Assembly Bill 2727, effective September 29, 2004 as a matter of urgency, amends Section 35186 of the Education Code, relating to schools. This amendment requires a school district to use its uniform complaint process, as amended by Statutes of 2004, Chapter 900 (SB 550), to help identify and resolve any emergency or urgent facilities conditions that pose a threat to the health

and safety of pupils or staff instead of conditions of facilities that are not maintained in a clean and safe manner or in good repair.

Legislative Digest

Existing regulations require each local educational agency to adopt policies and procedures for the investigation and resolution of complaints and require each local educational agency to include in its policies and procedures the person, employee, or agency position or unit responsible for receiving complaints, investigating complaints, and ensuring local educational agency compliance.

Statutes of 2004, Chapter 900, Senate Bill 550, effective September 29, 2004, requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment, and requires a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage.

This statute requires a school district to use its uniform complaint process to help identify and resolve any emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff instead of conditions of facilities that are not maintained in a clean and safe manner or in good repair.

This statute is operative upon the enactment of Statutes of 2004, Chapter 900,

Senate Bill 550, effective September 29, 2004.

Activities and Costs

Education Code Section 35186

Education Code Section 35186, as concurrently added by Statutes of 2004, Chapter 900, is amended at subdivisions (a) and (e) by Statutes of 2004, Chapter 903, to require school districts to utilize the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff.

Statutes of 2005, Chapter 118, Assembly Bill AB 831

Statutes of 2005, Chapter 118, Assembly Bill AB 831, effective July 25, 2005, as a matter of urgency: amends Education Code Sections 1240, 17592.70, 35186, 41500, 41501, 41572, 44258.9, 48642, 49436, 52055.640, 52295.35, 56836.165, and 60119; adds Education Code Section 88; repeals Education Code Section 32228.6; amends Item 6110-197-0890 of Section 2.00 of Chapter 208 of the Statutes of 2004 (the Budget Act of 2004); amends Sections 22 and 23 of Chapter 900 of the Statutes of 2004; making an appropriation therefor; and, declaring the urgency thereof, and takes effect immediately.

Legislative Digest

(1) Existing law requires a county superintendent of schools to conduct an annual

review of the use of textbooks and instructional materials within the first four weeks of the school year.

This statute requires that review to be completed by the 4th week of the school year, and would permit the county superintendent of schools in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index to utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials.

(3) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment.

Existing law requires a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage.

This statute requires that in addition, the notice contain a statement informing parents and guardians that there should be no teacher vacancies or misassignments, as defined.

(8) Existing law, the Pupil Textbook and Instructional Materials Incentive Program Act, requires the governing board of a school district to hold a public hearing and make

a determination as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, as defined, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education.

This statute, in addition, requires the governing board of a school district that makes that determination to provide information relating to the percentage or number of pupils who lack sufficient textbooks or instructional materials to classroom teachers and the public, thereby creating a state-mandated local program.

(10) Existing law, for the 2003-04 fiscal year, appropriates the sum of $138,000,000 to the State Department of Education for transfer to the Instructional Materials Fund to be apportioned to school districts on the basis of an equal amount per pupil enrolled in schools in decile 1 or 2 of the Academic Performance Index (API).

For these purposes, this statute bases enrollment on the number of pupils reported for purposes of the 2003 base API. The statute specifies that these funds may only be used to purchase instructional materials for schools in decile 1 or 2 of the Academic Performance Index (API).

(11) Existing law makes certain appropriations to the State Department of Education for the acquisition of instructional materials for school districts and for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts, and to oversee the compliance of schools with instructional materials sufficiency requirements.

Existing law provides that, for the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, these appropriations are deemed to be "General Fund revenues appropriated for school districts" for the 2004-05 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" for the 2004-05 fiscal year.

This statute, instead, includes those appropriations in the calculations for the 2003-04 fiscal year.

(14) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This statute would provides that, if the Commission on State Mandates determines that the statute contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(15) This statute declares that it is to take effect immediately as an urgency statute.

Activities and Costs

Education Code Section 1240

Education Code Section 1240, subdivision (c) (2) (D) (i), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, clarifies that the county superintendent visits shall "minimize disruption" of the operation of the school.

Education Code Section 1240, subdivision (i) (1), as amended by Statutes of

2005, Chapter 118, effective July 25, 2005, adds a cross reference to local adoption requirements to clarify that county superintendents are checking for standards-aligned materials adopted by the state or in accordance with Education Code 51050.

Education Code Section 1240, subdivision (i) (3) (A), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, claries that county superintendents must complete their reviews by the fourth week of the school year beginning with the 2005-06 school year.

Education Code Section 1240, subdivision (i) (3) (B) and (C), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, permits the county superintendent of schools in a county with 200 or more schools (Los Angeles County Office of Education) that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index to utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials.

Education Code Section 35186

Education Code Section 35186, subdivision (2) (A), as amended by Statutes of 2005, Chapter 118,effective July 25, 2005, requires the school district to modify the classroom uniform complaint procedure notices to include teacher vacancies.

Education Code Section 35186, subdivision (f) (3), as amended by Statutes of 2005, Chapter 118,effective July 25, 2005, requires the school district to modify the classroom uniform complaint procedure notices to include teacher vacancies and

misassignments.

Education Code Section 35186, subdivision (h) (3), as amended by Statutes of 2005, Chapter 118,effective July 25, 2005, provides additional criteria to the definition of a "teacher vacancy."

Education Code Section 44258.9

Education Code Section 44258.9, subdivision (b) (1)(A), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, requires the county superintendent of schools to also annually monitor and review schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies (as defined in Section 33126), and to annually review decile 1 to 3 schools for this purpose.

Education Code Section 44258.9, subdivision (b) (1)(B), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, requires the county superintendent of schools to also annually monitor and review decile 1-3 schools that are likely to have problems with teacher misassignments and teacher vacancies, unless the annual review finds no misassignments or vacancies, in which case that school will return to a four-year cycle.

Education Code Section 60119

Education Code Section 60119, subdivision (a) (1)(A), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, requires the school district governing boards determine the sufficiency of the textbook and instructional materials based on

the alignment standards adopted in Section 60605.

Education Code Section 60119, subdivision (a) (2)(A), as amended by Statutes of 2005, Chapter 118, effective July 25, 2005, requires the school district governing boards which declare an insufficiency of instructional materials to specify the percentage of students who lack sufficient standards-aligned materials in each subject area.

SECTION 2. REGULATORY MANDATES

Title 2, California Administrative Code

The Office of Public School Construction (OPSC), State Allocation Board (Board), has adopted Title 2 regulations, final regulations effective May 31, 2005, to implement the facilities portion of Statutes of 2004, Chapter 899, Senate Bill 6, effective September 29, 2004. The new regulations are located at Title 2, Sections 1859.300 through 1859.329, and are entitled "School Facilities Needs Assessment and Emergency Repair Program."

Related Executive Orders

"Certification of Eligibility"

Needs Assessment Report, Form SAB 61-01 (New 01/05)

Expenditure Report, Form SAB 61-02 (New 02/05)

Application For Reimbursement and Expenditure Report, Form SAB 61-03 (New 02/05)

Web-Based Progress Report Survey

Web-Based Needs Assessment

Activities and Costs

Section 1859.310 requires that a school site that qualifies for the School Facilities Needs Assessment Grant Program (decile 1-3 school constructed prior to January 1, 2000) shall be allocated funds by the Board in order to conduct a one-time comprehensive school facilities needs assessment and shall be required to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of Section 1859.311.

Section 1859.312 requires the Board to allocate $10 per pupil enrolled in eligible school sites, with a minimum allocation of $7,500 for each school site.

Section 1859.313 specifies the use of the Needs Assessment Grant Funds to include:

(a) Unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment.

(b) Repairs identified in Part V of the Form SAB 61-01 at any eligible school site where a Needs Assessment has been completed.

Section 1859.314 requires the person performing the Needs Assessment to have general knowledge of school facilities construction, operation, and maintenance and either a minimum of three years of experience with cost estimation and building systems life cycle analysis; or, be an architect, engineer, or a general contractor licensed under California law; to personally conduct the assessment on the school sites; and, the persons performing or supervising the Needs Assessment to be

independent third parties and not be employees of the school district.

Section 1859.315 requires school districts that receive School Facilities Needs Assessment Grant funds to:

(a) Complete a Certification of Eligibility and submit it to the OPSC.

(b) Complete a Web-Based Progress Report Survey and submit it to the OPSC.

(c) Complete a Web-Based Needs Assessment for each applicable site and submit it to the OPSC by January 1, 2006.

(d) Complete Form SAB 61-02 to report all expenditures made with Needs Assessment Grant funds by January 1, 2007.

Section 1859.316 states that a school district's Needs Assessment Grant expenditures shall be subject to audit and funds subject to repayment to the state.

Section 1859.320 requires a school district seeking an Emergency Repair Program Grant to complete and file a Form SAB 61-03 with the OPSC.

Section 1859.325 states that school district facility maintenance accounts are subject to a review by the OPSC.

Section 1859.326 states that the school district Emergency Repair Program expenditures are subject to audit by the OPSC and funds subject to collection by the state.

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PART B. COST ESTIMATES

SECTION 1. CLAIMANTS' COST ESTIMATE

The actual and/or estimated costs resulting from the mandate exceeds one thousand dollars ($1,000) for San Diego County Office of Education and exceeds one thousand dollars ($1,000) for the Sweetwater Union High School District. See the declarations in Exhibit A.

SECTION 2. STATEWIDE COST ESTIMATE

STATEWIDE COST ESTIMATE:	FY2004-05	FY2005-06
K-12 School Districts	$8,603,087	$6,087,000
County Offices of Education	$4,202,737	$4,260,000
	$12,805,824	$10,347,000

The statewide cost estimate is based on voluntary responses to a survey questionnaire prepared by the test claimants. The responses from school districts represent about 10% of the Williams Decile 1-3 enrollment. The responses from county offices of education represent about 23% of the Williams Decile 1-3 enrollment. The responses were extrapolated based on the ratio of the survey statistics to total statewide statistics.

A. STATEWIDE STATISTICS

Statewide statistics were obtained from the California Department of Education web page for Fiscal Year 2003-04, the most current year available. The CDE statistics were modified to exclude the following nonconforming types of schoolsites and related

enrollment: alternative, special education, continuation community day, opportunity, juvenile court, county community, and state schools.

FY 2003-04 Statewide Statistics

Number of county offices	58
K-12 enrollment	6,093,666
K-12 school districts	989
K-12 school sites	7895
Decile 1-3 schools	2208

B. SURVEY STATISTICS

In order to obtain cost data for the test claim, two questionnaires were developed: one for county offices of education and one for K-12 school districts. The questionnaires were prepared by the test claimants and sponsored by the Education Mandate Cost Network. The EMCN is a consortium of local education agencies established 25 years ago to promote statewide mandate reimbursement issues. The EMCN fiscal agent is the California County Superintendents Educational Services Association.

The county office of education questionnaires were mailed directly to each county office of education. The K-12 questionnaires were advertised for download from the School Services of California, Inc. website. School Services of California, Inc. is the contract consultant for the EMCN.

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K-12 Questionnaire Responses

Number of K-12 district responses	38
Total schools in K-12 responses	884
Number of Decile 1-3 schools in the K-12 responses	209
Total enrollment of the K-12 responses	663,740

COE Questionnaire Responses

Number of COE questionnaires received	11
Number of school districts included in COE responses	225
Number of Decile 1-3 schools included in COE responses	500
Number of Decile 1-3 schools inspected by COE responses	499

C. SAMPLE SIZE

In order to extrapolate the survey results for a statewide cost estimate, percentages were calculated for the survey statistics compared to the statewide statistics.

K-12 Data Element	Survey Total	State Total	Survey/State Percentage
Number of districts	38	989	3.8%
Number of students	663,740	6,093,666	10.9%
Number of schoolsites	884	7985	11.1%
Number of Decile 1-3 schoolsites	209	2208	9.5%

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COE Data Element	Survey Total	State Total	Survey/State Percentage
County Offices of Education	11	58	19%
Number of districts in COE	225	7895	2.8%
Number of Decile 1-3 sites in COE	500	2208	23%

D. STATEWIDE COST EXTRAPOLATION

The questionnaires requested the local education agencies to provide estimated staff hours for the mandate activities. The survey results were extrapolated by the percentage calculated above which seems most relevant to the activity being considered to obtain a statewide cost estimate for FY 2004-05. The statewide cost estimate for FY 2005-06 is anticipated to be the same amount for ongoing and annual activities.

K-12 School District Staff Costs

K-12 Mandate Activity	Survey Costs	Statewide Costs %	FY2004-05	FY2005-06
1 Preparing to Implement Mandate-Ongoing	$132,310	11.1%	$1,191,982	$1,200,000
2 Facilities Inspection: One-time	$ 96,938	11.1%	$ 873,315	$ n/a
3 Instructional Materials-Annual	$138,890	11.1%	$1,251,261	$1,250,000
4 Teacher Assignments-Ongoing	$ 84,160	11.1%	$ 758,198	$ 760,000
5 SARC-One-time	$109,270	11.1%	$ 984,414	$ n/a
6 Uniform Complaint Procedure-Ongoing	$ 61,460	10.9%	$ 563,853	$ 565,000
7 Financial and Compliance Audits-Ongoing	$ 10,710	11.1%	$ 96,486	$ 97,000
8 School Facility Needs Assessment-One-time	$ 63,510	9.5%	$ 668,526	$ n/a
9A Preparing for COE Reviews-Annual	$107,820	9.5%	$1,134,947	$1,135,000
9B Participating in the COE Reviews-Annual	$ 39,900	9.5%	$ 420,000	$ 420,000
9C Remediation After COE Reviews-Annual	$ 62,710	9.5%	$ 660,105	$ 660,000
Statewide Totals (K-12)			$8,603,087	$6,087,000

County Office of Education Staff Costs

K-12 Mandate Activity	Survey Costs	Statewide Costs %	FY2004-05	FY2005-06
1 Preparing to Implement Mandate-Ongoing	$184,029	19%	$ 968,568	$ 970,000
2 Teacher Assignments-Ongoing	$ 94,070	23%	$ 409,000	$ 410,000
3 Uniform Complaint Procedure-Ongoing	$ 12,010	23%	$ 52,217	$ 50,000
4 Financial and Compliance Audits-Ongoing	$ 4,640	23%	$ 20,174	$ 20,000
5A Preparing for Onsite Visits-Annual	$206,820	23%	$ 899,217	$ 900,000
5B Conducting the Onsite Visit-Annual	$305,160	23%	$1,326,778	$1,330,000
5C Reports and Monitoring-Annual	$121,160	23%	$ 526,783	$ 580,000
Statewide Totals (COE)			$4,202,737	$4,260,000

TOTAL STATEWIDE COST ESTIMATE:	FY2004-05	FY2005-06
Statewide Totals (K-12)	$8,603,087	$6,087,000
Statewide Totals (COE)	$4,202,737	$4,260,000
	$12,805,842	$10,347,000

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PART C. FUNDING SOURCES

1. State Funds

Statutes of 2004, Chapter 899 (SB 6), effective September 29, 2004:

Section 3 appropriates $250,000 from the General Fund to the State Allocation Board for the administration of the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Account for the 2004-05 fiscal year.

Section 4 appropriates $30,000,000 from the General Fund, of which $25,000,000 is to be appropriated to the State Department of Education for transfer to the State Allocation Board for grants to school districts under the School Facilities Needs Assessment Grant Program and $5,000,000 is to be appropriated for transfer to the School Facilities Emergency Repair Account.

Statutes of 2004, Chapter 900 (SB 550), effective September 29, 2004

Section 19 authorizes the State Department of Education to expend up to $5,000,000 from the State Instructional Materials Fund to acquire instructional materials for school districts for purposes of these provisions.

Section 22 and 23 amend Section 36 of Chapter 216, Statutes of 2004 which appropriated $138,000,000 from the General Fund to the State Department of Education for transfer to the Instructional Materials Fund and appropriates $20,200,000 from the General Fund to the State Department of Education and, of that amount $5,000,000 is to be appropriated for transfer to the State Instructional Materials Fund for purposes of acquiring instructional materials, as specified, $15,000,000 is to be

appropriated for allocation to county offices of education for review and monitoring of schools, as specified, and $200,000 is to be appropriated for purposes of implementing this act.

Statutes of 2005, Chapter 118 (AB 831), effective July 25, 2005:

Sections 16, 17, and 18 amend Item 6110-197-0890 of Section 2.00 of Chapter 208 of the Statutes of 2004 (the Budget Act of 2004), and amends Sections 22 and 23 of Chapter 900 of the Statutes of 2004, which appropriated the sum of $138,000,000 to the State Department of Education for transfer to the Instructional Materials Fund to be apportioned to school districts on the basis of an equal amount per pupil enrolled in schools in decile 1 or 2 of the Academic Performance Index.

2. Federal Funds

There are no funds specifically appropriated for the implementation of the mandate.

3. Non-local Agency Funds

There are no funds specifically appropriated for the implementation of the mandate.

4. Local Agency General Purpose Funds

There are no funds specifically appropriated for the implementation of the mandate.

5. Fee authority to offset costs

There is no fee authority for the implementation of the mandate.

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PART D. RELEVANT MANDATE DETERMINATIONS

The test claim legislation amends existing law which is the subject of other mandates previously approved for reimbursement and of test claims in process.

Mandates Approved for Current Reimbursement

448/75	Annual Parent Notification III
36/77	Financial and Compliance Audits
100/81	School District Fiscal Accountability Reporting
641/86	Brown Act Reform / Open Meetings Act
917/87	County Office Fiscal Accountability Reporting
1463/89	School Accountability Report Cards
846/98	Annual Parent Notification 1998-2000

Test Claims in Process

531/00	Reporting Improper Governmental Activities
887/01	Academic Performance Index
1084/02	Deferred Maintenance
1087/02	Teacher Credentialing
1168/02	School Facilities Funding Requirements
1102/02	Uniform Complaint Procedures
04/03	Instructional Materials Adoption
908/03	Clean School Restrooms

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6. DECLARATIONS

Attached as Exhibit "A"

7. DOCUMENTATION

List of Exhibits

Exhibit A Declaration of Elaine Hodges, Senior Director, Leadership and Accountability, San Diego County Office of Education
SDCOE FY 2004-05 Estimated Cost
Declaration of Ernest Anastos, Area Superintendent, District Office Region, Sweetwater Union High School District
SUHSD FY 200405 Summary of Declaration Detailed Costs
Sample Employee Cost Declaration

Exhibit B Statutes

Statutes of 2004, Chapter 899 (SB 6)
Statutes of 2004, Chapter 900 (SB 550)
Statutes of 2004, Chapter 902 (AB 3001)
Statutes of 2004, Chapter 903 (AB 2727)
Statutes of 2005, Chapter 118 (AB 831)

Exhibit C Regulations

Title 2, CCR, Sections 1859.300-1859.329
Title 5, CCR, Sections 4600-4671

Exhibit D Executive Orders
The Office of Public School Construction and the State Allocation Board:

Public School Construction web page (www.opsc.dgs.ca.gov)
Certification of Eligibility
Interim Evaluation Instrument
Needs Assessment Report, SAB 61-01
Needs Assessment Report Worksheet
Expenditure Report, SAB 61-02
Application For Reimbursement and Expenditure Report, SAB 61-03
Web-Based Progress Report Survey
Web-Based Needs Assessment

Exhibit E Statewide Cost Estimate

State Department of Education Statistical Profile Fiscal Year 2003-04
List of Decile 1-3 Schools by County
COE Summary Schedule of Questionnaire Responses
Sample COE Questionnaire
K-12 Summary Schedule of Questionnaire Responses
Sample K-12 Questionnaire

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COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

Lora Duzyk
Assistant Superintendent Business Services
San Diego County Office of Education

9/8/05
Date

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

Dianne L. Russo
Interim Chief Fiscal Officer
Sweetwater Union High School District

09-09-05
Date

Document	Pages	Total Pages
Declaration of Elaine Hodges, Senior Director Leadership and Accountability San Diego County Office of Education	1-15	15
SDCOE FY 2004-05 Estimated Cost-Dollars	1-3	3
SDCOE FY 2004-05 Estimated Cost-Hours	1-3	3
Declaration of Ernest Anastos, Area Superintendent Sweetwater Union High School District	1-29	29
SUHSD FY 200405 Summary of Declaration Detailed Costs	1-9	9
Sample Employee Cost Declaration	1-3	3

Exhibit A DECLARATIONS

DECLARATION OF ELAINE HODGES, EdS
SAN DIEGO COUNTY OFFICE OF EDUCATION

Test Claim of San Diego County Office of Education
and Sweetwater Union High School District.

COSM No. _____

STATUTES

Statutes of 2004, Chapter 899 (SB 6), effective September 29, 2004
Statutes of 2004, Chapter 900 (SB 550), effective September 29, 2004
Statutes of 2004, Chapter 902 (AB 3001), effective September 29, 2004
Statutes of 2004, Chapter 903 (AB 2727), effective September 29, 2004
Statutes of 2005, Chapter 118 (AB 831), effective July 25, 2005

EDUCATION CODE SECTIONS

1240	17014	17032.5	17070.75	17089	17592.70
17592.72	35186	41020	41344.4	42127.6	44258.9
45125.1	51050	60119	Section 5, C 899,S 2004 (uncodified)		

REGULATIONS

Title 5, CCR, Sections 4600 through 4671

Williams Case Implementation

I, Elaine Hodges, Senior Director, Leadership & Accountability, San Diego County Office of Education, make the following declaration and statement.

In my capacity as Senior Director, Leadership & Accountability, and Williams Task Force Chairman, I am the administrative official responsible for the implementation of the Williams Case mandate legislation by the San Diego County Office of Education. I am familiar with the provisions and requirements of the statutes and Education Code sections enumerated above. These new laws and regulations

result in increased costs to, and a new level of service for, the San Diego County Office of Education for the required monitoring and oversight of school districts within the jurisdiction of the San Diego County Office of Education which implement the Williams Case legislation, as well as increased costs to, and a new level of service for, the San Diego County Office of Education in its capacity as a local education agency which operates schools as a "school district." This declaration is limited to the new activities and costs required for monitoring and oversight of the school districts within the jurisdiction of the San Diego County Office of Education.

PART 1. NEW PROGRAM AND INCREASED LEVEL OF SERVICES

The Williams Case mandate legislation results in increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel, to implement the following activities:

Education Code Section 1240

Education Code Section 1240 (c) (1) required the county superintendent of schools to visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

Education Code Section 1240 (c) (2) (A) as amended by Statutes of 2004, Chapter 900, requires the county superintendent of schools, or his or her designee, to the extent that funds are appropriated for purposes of this paragraph, to annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education or his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, of his or her observations while visiting the schools, among other things.

Education Code Section 1240 (c) (2) (C), as amended by Statutes of 2004, Chapter 900, requires the county superintendent to report the results of the visit to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

Education Code Section 1240 (c) (2) (D), as amended by Statutes of 2004, Chapter 900, and as amended by Statutes of 2005, Chapter 118, requires the county superintendent to conduct the visits made pursuant to this paragraph at least annually, that the visits minimize disruption of the operation of the school, that the visits be performed by individuals who meet the requirements of Section 45125.1, and that not less than 25 percent of the visits be unannounced visits which shall only be used to observe the condition of school repair and maintenance and the sufficiency of

instructional materials, as defined by Section 60119.

Education Code Section 1240 (c) (2) (E), as amended by Statutes of 2004, Chapter 900, requires the county superintendent to make the priority objective of the visits made pursuant to this paragraph to be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

Education Code Section 1240 (i) previously required the county superintendent of schools to enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

Education Code Sections1240 (i) (1) and (2), as amended by Statutes of 2004, Chapter 900, and as amended by Statutes of 2005, Chapter 118, requires the county

superintendent of schools to enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority, in accordance with Education Code 51050, as defined in subdivision (c) of Section 60119.

Education Code Section 1240 (i) (3) (A), as amended by Statutes of 2004, Chapter 900, and as amended by Statutes of 2005, Chapter 118, requires the county superintendent, commencing with the 2005-06 school year, in the case of a school ranked in any of deciles 1 to 3, inclusive and not currently under review through a state or federal intervention program, to specifically review that school at least annually and within the first four weeks of the school year as a priority school. For the 2004-05 fiscal year only, the county superintendent is required to make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

Education Code Section 1240 (i) (4), as amended by Statutes of 2004, Chapter 900, requires the county superintendent, if it is determined that a school does not have sufficient textbooks or instructional materials, to do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to

the Superintendent of Public Instruction.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the Department of Education, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision.

Education Code Section 35186

Title 5 of the California Code of Regulations, Chapter 5.1 (commencing with Section 4600), requires school districts to utilize a uniform complaint process. Education Code Section 35186, as added by Statutes of 2004, Chapter 900, requires school districts to report summarized data on the nature and resolution of all complaints

on a quarterly basis to the county superintendent of schools and for the county superintendent of schools to receive and review those reports.

Education Code Section 41020

Education Code Section 41020 requires county superintendents of schools to review the audit exceptions contained in an audit of a school district related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determine whether the exceptions have been either corrected or an acceptable plan of correction has been developed. Education Code Section 41020, as amended by Statutes of 2004, Chapter 900, requires at subdivision (i) (2), that commencing with the 2004-05, the review shall include those audit exceptions related to use of instructional materials program funds, teacher misassignments, information reported on the school accountability report card, which determines whether the exceptions are either corrected or an acceptable plan of correction has been developed.

Education Code Section 41344.4

Education Code Section 41344.4, as added by Statutes of 2004, Chapter 900, requires county superintendents of schools to certify to the Superintendent of Public Instruction and the Controller whether the audit exceptions related to the requirements specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 14501, were corrected by the local educational agency or that an acceptable plan of correction was submitted to the county superintendent of schools pursuant to subdivision (k) of Section

41020.

Education Code Section 42127.6

Education Code Section 42127.6 is one of several sections which specify the oversight duties of the county office of education for school districts in fiscal distress.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, requires the county superintendent to review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the fifteen most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent is required to investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. The county superintendent is then required to report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, authorizes the county superintendent to assign the Fiscal Crisis

and Management Assistance Team to review school district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a review team is assigned, the school district is required to follow the recommendations of the team, unless the district shows good cause for failure to do so.

Education Code Section 44258.9

Education Code Section 44258.9 is one of several sections which specify the annual credential review and monitoring duties of the county office of education for school districts. Education Code Section 44258.9 subdivision (b) (1), as amended by Statutes of 2004, Chapter 902, and as amended by Statutes of 2005, Chapter 118, requires the county superintendent of schools to:

(A) Annually monitor and review schools and school districts of schools that are likely to have problems with teacher misassignments and teacher vacancies, and to annually review decile 1 to 3 schools for this purpose.

(B) Annually monitor and review schools and school districts with schools ranked in deciles 1 to 3, inclusive, if those schools are not currently under review through a state or federal intervention program until the annual reviews indicate that

there are no teacher misassignments or vacancies.

Education Code Section 44258.9 subdivision (b) (2), as amended by Statutes of 2004, Chapter 902, requires the county superintendent of schools to investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

Education Code Section 44258.9 subdivision (c) (4), as amended by Statutes of 2004, Chapter 902, requires the county superintendent of schools to identify in its annual report to the Commission on Teacher Credentialing and the State Department of Education summarizing the results of all assignment monitoring and reviews information on certificated employee assignment practices in schools ranked in deciles 1 to 3, the classes in these schools in which 20 percent or more pupils the are English learners who are assigned a teacher who possesses a certificate issued pursuant to Section 44253.3 or 44253.4 or has completed training pursuant to Section 44253.10 or is otherwise authorized by statute.

Un-codified Requirements

Section 5, Statutes of 2004, Chapter 899, requires school districts and county offices of education to use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes,

regulations, and technical guidance may be provided in the future and may supersede local interpretations.

PART 2. COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for San Diego County Office of Education.

1. PREPARING TO IMPLEMENT THE MANDATE

Policies, Procedures, Planning, Training: Staff time developing policies and procedures, planning, developing a site review procedure, and training school district and county office staff to implement the mandate.

Estimated Costs October 2004 through June 2005 $82,100

Estimated Costs July 2005 through June 2006 $215,000

2. TEACHER ASSIGNMENTS

A District Evaluation: Staff time for district Williams Deciles 1-3 schools annual reviews, investigating district efforts to ensure staff assignments requiring CLAD, BCLAD, or SDAIE training have required authorizations or training. Submitting an Assignment Monitoring and Review Report to the CCTC and CDE.

Estimated Costs October 2004 through June 2005 $8,600

Estimated Costs July 2005 through June 2006 $23,000

B. FCMAT Referrals: Staff time to refer the district to the Fiscal Crisis and Management Assistance Team (FCMAT) for review and recommendations on teacher

hiring practices, teacher retention rate, percentage of highly qualified teachers, and the extent of teacher misassignments.

Estimated Costs October 2004 through June 2005 $0

Estimated Costs July 2005 through June 2006 $unknown

3. UNIFORM COMPLAINT PROCEDURE

Quarterly Uniform Complaint Report: Staff time developing a process, receiving, monitoring, processing, and reporting on the quarterly uniform complaint reports from school districts.

Estimated Costs October 2004 through June 2005 $700

Estimated Costs July 2005 through June 2006 $2,500

4. FINANCIAL AND COMPLIANCE AUDITS

Audit Exceptions: Staff time (A) Reviewing school district audit exceptions relating to the new Williams audit criteria, (B) monitoring corrective actions taken, (C) obtaining a district response, and (D) certifying to the Superintendent of Public Instruction that these exceptions have been corrected.

Estimated Costs October 2004 through June 2005 $0

Estimated Costs July 2005 through June 2006 $unknown

5. COUNTY OFFICE INSPECTIONS OF WILLIAMS DECILES 1-3 SCHOOLS

A. Preparing for Onsite Visits: Staff time preparing the materials needed for the visit, scheduling personnel and locations, notification and training of districts, training of

team members and other related administrative tasks.

Estimated Costs October 2004 through June 2005 $25,500

Estimated Costs July 2005 through June 2006 $25,000

B. Conducting the Onsite Visit: Staff time for inspections, staff interviews, data research, and related tasks.

Estimated Costs October 2004 through June 2005 $52,900

Estimated Costs July 2005 through June 2006 $100,000

C. Reports and Monitoring: Staff time for data collection from team leads, data evaluation, report preparation, notification to districts, compliance reporting to the state, and FCMAT referrals. Staff time reporting to county Board of Education, County Board of Supervisors and California Commission on Teacher Credentialing

Estimated Costs October 2004 through June 2005 $15,200

Estimated Costs July 2005 through June 2006 $15,000

PART 3. FUNDING SOURCES

Statutes of 2004, Chapter 900 (SB 550), appropriated $15,000,000 for allocation to county offices of education for review and monitoring of schools. From this appropriation, the San Diego County Office of Education has received, or has receivable, the amount of $312,000 for Fiscal Year 2004-05, and the estimated amount of $312,000 for Fiscal Year 2005-06.

No federal funds have been received by the county office of education, or are

receivable, which were specifically appropriated to implement this mandate. No other state or local monies were received by the county office of education, or are receivable, which were specifically appropriated to implement this mandate. No federal, state, local government, or private grants or awards have been received by the county office of education, or are receivable, which were specifically designated to implement this mandate. There is no authority in federal, state, or local law for this county office of education to levy fees to offset the costs to implement this mandate.

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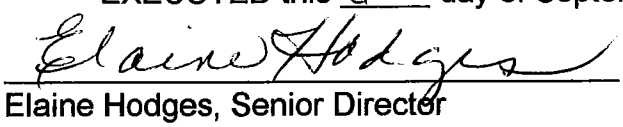
CERTIFICATION

I hereby declare under penalty of perjury under the laws of the State of California that the information in this declaration is true and complete to the best of my own knowledge or information or belief.

EXECUTED this 6th day of September, 2005, at San Diego, California



Elaine Hodges, Senior Director
Leadership &Accountability
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7399
Voice: 858-292-3836
Fax: 858-573-2664
E-Mail: ehodges@sdcoe.net

Williams Case Implementation Test Claim
San Diego County Office of Education 2004-05 Estimated Cost
Source: SDCOE Declaration

Entry #	Name of Declarant	Preparation for the Mandate			Decile 1-3 Schools Inspections			Teacher Assignments		Uniform Complaint Procedure	Financial & Compliance Audits
		Policies & Procedures	Reports & Forms	Training	Prep-Onsite Visits	Onsite Visits	Reports & Monitoring	District Evaluation	FCMAT Referrals	Quarterly Uniform Complaint Report	Audit Exceptions
1	Barker, Sheridan			$ 120.64	$ 120.64	$ 482.56					
2	Bishop, Cynthia			$ 308.44	$ 308.44	$ 1,233.76					
3	Blackman, Mary			$ 251.12	$ 502.24	$ 2,511.20					
4	Branch, Joanne	$ 206.00		$ 309.00	$ 25.75	$ 1,158.75					
5	Bromley, Bridget					$ 1,116.64					
6	Carreon, Victoria	$ 3,586.80	$ 614.88	$ 1,537.20	$ 204.96	$ 888.16	$ 34.16			$ 717.36	
7	Cates, Patti		$ 1,897.50								
8	Choate, Casey							$ 3,928.50			
9	Colli, Sharon				$ 743.40	$ 1,239.00					
10	Cunningham, Justin				$ 278.16	$ 1,668.96					
11	Danielson, Dennis			$ 265.84		$ 1,063.36					
12	Dorta, Sylvia					$ 540.24					
13	Dunlevy, Cynthia					$ 179.52					
14	Ehm, Bryan	$ 2,722.24		$ 752.96		$ 1,621.76					
15	Fleming, Chuck	$ 4,265.11	$ 2,891.60			$ 1,156.64					
16	Flynn, Kristine	$ 954.80			$ 381.92	$ 1,145.76					
17	Fort-Merrill, Michele	$ 3,679.13	$ 323.44	$ 646.88							
18	Free, Cynthia							$ 4,741.62			
19	Gassang, Myrna					$ 745.60					
20	Giberson, Nancy	$ 5,124.06				$ 189.78					
21	Glover, Mary					$ 616.88					
22	Gomez, Norma			$ 125.52		$ 627.60					

Prepared by SixTen and Associates
September 8, 2005

Williams Case Implementation Test Claim
San Diego County Office of Education 2004-05 Estimated Cost
Source: SDCOE Declaration

Entry #	Name of Declarant	Preparation for the Mandate			Decile 1-3 Schools Inspections			Teacher Assignments		Uniform Complaint Procedure	Financial & Compliance Audits
		Policies & Procedures	Reports & Forms	Training	Prep-Onsite Visits	Onsite Visits	Reports & Monitoring	District Evaluation	FCMAT Referrals	Quarterly Uniform Complaint Report	Audit Exceptions
23	Gomez, Ricardo			$ 97.36		$ 194.72					
24	Grey, Marie			$ 244.60	$ 733.80	$ 1,956.80					
25	Hays, Leslie			$ 534.16	$ 400.62	$ 1,736.02					
26	Hickle, Rosa	$ 2,335.20		$ 88.96	$ 978.56	$ 266.88	$ 3,336.00				
27	Hodges, Elaine	$ 11,191.69			$ 3,098.68	$ 510.37	$ 656.19				
28	Hogarth, Warren	$ 2,052.00	$ 228.00	$ 1,824.00		$ 912.00	$ 4,959.00				
29	Jesse, Ron				$ 252.44	$ 2,019.52					
30	Kerr, Jean	$ 4,316.13	$ 2,187.36	$ 937.44	$ 8,983.80	$ 2,812.32	$ 4,765.32				
31	LaBonte, Karen	$ 177.98		$ 71.19		$ 284.76					
32	Maybury, Dana			$ 120.88		$ 483.52					
33	McIntyre, Patti			$ 205.88		$ 823.52					
34	Medina, Oscar	$ 767.25				$ 204.60					
35	Meyers, Jane			$ 280.92	$ 280.92	$ 561.84					
36	Morales, Christopher					$ 1,001.88					
37	Nicholson, Robert	$ 5,916.29		$ 1,581.11		$ 1,250.18	$ 73.54				
38	Odenthal, Joanne			$ 304.70	$ 243.76	$ 1,767.26	$ 60.94				
39	Pourzamani, Flora					$ 534.00					
40	Ramirez, Oscar		$ 1,932.53								
41	Reed, Victoria					$ 523.92					
42	Reising, Chris					$ 561.76					
43	Rens, Kimberley	$ 142.42				$ 569.68					
44	Rienick, Jameson			$ 106.28		$ 850.24					

Prepared by SixTen and Associates
September 8, 2005

Williams Case Implementation Test Claim
San Diego County Office of Education 2004-05 Estimated Cost
Source: SDCOE Declaration

Entry #	Name of Declarant	Preparation for the Mandate			Decile 1-3 Schools Inspections			Teacher Assignments		Uniform Complaint Procedure	Financial & Compliance Audits
		Policies & Procedures	Reports & Forms	Training	Prep-Onsite Visits	Onsite Visits	Reports & Monitoring	District Evaluation	FCMAT Referrals	Quarterly Uniform Complaint Report	Audit Exceptions
45	Sapien, Rebecca			$ 203.28		$ 406.56					
46	Simpson, William				$ 280.80	$ 1,123.20					
47	Snyder, Sharon			$ 272.84		$ 545.68					
48	Spears, Tony			$ 308.52	$ 308.52	$ 1,234.08					
49	Sterman, Daryl			$ 261.80		$ 1,047.20					
50	Stremski, Regina			$ 239.68		$ 1,438.08					
51	Suber, Joyce			$ 277.64		$ 555.28					
52	Sulzer, Dennis			$ 222.28		$ 889.12					
53	Takashima, Barbara	$ 3,944.40	$ 3,615.70	$ 2,629.60	$ 2,958.30	$ 3,352.74	$ 1,314.80				
54	Taylor, Nancy				$ 523.76	$ 1,571.28					
55	Taylor-Austin, Lee			$ 193.72		$ 387.44					
56	Thompson-Noble, Sandie			$ 182.46		$ 364.92					
57	Toth, Melinda	$ 244.25			$ 2,246.32						
58	Tyler, Myrtice			$ 215.92		$ 431.84					
59	Villeza, Emriss	$ 758.09	$ 132.23	$ 176.30							
60	Wagner, Karen				$ 244.56	$ 978.24					
61	Wong, Sam				$ 1,395.20	$ 558.08					
	TOTALS	**$ 52,383.84**	**$ 13,823.24**	**$ 15,899.12**	**$ 25,495.55**	**$ 52,895.70**	**$ 15,199.95**	**$ 8,670.12**	**$ -**	**$ 717.36**	**$ -**

$ 82,106.20

Prepared by SixTen and Associates
September 8, 2005

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Williams Case Implementation Test Claim
San Diego County Office of Education 2004-05 Estimated Cost
Source: SDCOE Declaration

		Preparation for the Mandate			Decile 1-3 Schools Inspections			Teacher Assignments		Uniform Complaint Procedure	Financial & Compliance Audits			
Entry #	Name of Declarant	Policies & Procedures	Reports & Forms	Training	Prep-Onsite Visits	Onsite Visits	Reports & Monitoring	District Evaluation	FCMAT Referrals	Quarterly Uniform Complaint Report	Audit Exceptions	PHR	Total # hours	Cost to SDCOE
1	Barker, Sheridan	0.0	0.0	4.0	4.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 30.16	24.0	$ 723.84
2	Bishop, Cynthia	0.0	0.0	4.0	4.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 77.11	24.0	$ 1,850.64
3	Blackman, Mary	0.0	0.0	4.0	8.0	40.0	0.0	0.0	0.0	0.0	0.0	$ 62.78	52.0	$ 3,264.56
4	Branch, Joanne	4.0	0.0	6.0	0.5	22.5	0.0	0.0	0.0	0.0	0.0	$ 51.50	33.0	$ 1,699.50
5	Bromley, Bridget	0.0	0.0	0.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 69.79	16.0	$ 1,116.64
6	Carreon, Victoria	52.5	9.0	22.5	3.0	13.0	0.5	0.0	0.0	10.5	0.0	$ 68.32	111.0	$ 7,583.52
7	Cates, Patti	0.0	50.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ 37.95	50.0	$ 1,897.50
8	Choate, Casey	0.0	0.0	0.0	0.0	0.0	0.0	135.0	0.0	0.0	0.0	$ 29.10	135.0	$ 3,928.50
9	Colli, Sharon	0.0	0.0	0.0	12.0	20.0	0.0	0.0	0.0	0.0	0.0	$ 61.95	32.0	$ 1,982.40
10	Cunningham, Justin	0.0	0.0	0.0	4.0	24.0	0.0	0.0	0.0	0.0	0.0	$ 69.54	28.0	$ 1,947.12
11	Danielson, Dennis	0.0	0.0	4.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 66.46	20.0	$ 1,329.20
12	Dorta, Sylvia	0.0	0.0	0.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 67.53	8.0	$ 540.24
13	Dunlevy, Cynthia	0.0	0.0	0.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 11.22	15.0	$ 179.52
14	Ehm, Bryan	47.0	0.0	13.0	0.0	28.0	0.0	0.0	0.0	0.0	0.0	$ 57.92	88.0	$ 5,096.96
15	Fleming, Chuck	59.0	40.0	0.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 72.29	115.0	$ 8,313.35
16	Flynn, Kristine	20.0	0.0	0.0	8.0	24.0	0.0	0.0	0.0	0.0	0.0	$ 47.74	52.0	$ 2,482.48
17	Fort-Merrill, Michele	45.5	4.0	8.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ 80.86	57.5	$ 4,649.45
18	Free, Cynthia	0.0	0.0	0.0	0.0	0.0	0.0	78.0	0.0	0.0	0.0	$ 60.79	78.0	$ 4,741.62
19	Gassang, Myrna	0.0	0.0	0.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 46.60	16.0	$ 745.60
20	Giberson, Nancy	54.0	0.0	0.0	0.0	2.0	0.0	0.0	0.0	0.0	0.0	$ 94.89	56.0	$ 5,313.84
21	Glover, Mary	0.0	0.0	0.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 77.11	8.0	$ 616.88
22	Gomez, Norma	0.0	0.0	2.0	0.0	10.0	0.0	0.0	0.0	0.0	0.0	$ 62.76	12.0	$ 745.60

Prepared by SixTen and Associates
September 8, 2005

Williams Case Implementation Test Claim
San Diego County Office of Education 2004-05 Estimated Cost
Source: SDCOE Declaration

Entry #	Name of Declarant	Preparation for the Mandate			Decile 1-3 Schools Inspections			Teacher Assignments		Uniform Complaint Procedure	Financial & Compliance Audits			
		Policies & Procedures	Reports & Forms	Training	Prep-Onsite Visits	Onsite Visits	Reports & Monitoring	District Evaluation	FCMAT Referrals	Quarterly Uniform Complaint Report	Audit Exceptions	PHR	Total # hours	Cost to SDCOE
23	Gomez, Ricardo	0.0	0.0	4.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 24.34	12.0	$ 292.08
24	Grey, Marie	0.0	0.0	4.0	12.0	32.0	0.0	0.0	0.0	0.0	0.0	$ 61.15	48.0	$ 2,935.20
25	Hays, Leslie	0.0	0.0	8.0	6.0	26.0	0.0	0.0	0.0	0.0	0.0	$ 66.77	40.0	$ 2,670.80
26	Hickle, Rosa	52.5	0.0	2.0	22.0	6.0	75.0	0.0	0.0	0.0	0.0	$ 44.48	157.5	$ 7,005.60
27	Hodges, Elaine	153.5	0.0	0.0	42.5	7.0	9.0	0.0	0.0	0.0	0.0	$ 72.91	212.0	$ 15,456.92
28	Hogarth, Warren	18.0	2.0	16.0	0.0	8.0	43.5	0.0	0.0	0.0	0.0	$ 114.00	87.5	$ 9,975.00
29	Jesse, Ron	0.0	0.0	0.0	4.0	32.0	0.0	0.0	0.0	0.0	0.0	$ 63.11	36.0	$ 2,271.96
30	Kerr, Jean	110.5	56.0	24.0	230.0	72.0	122.0	0.0	0.0	0.0	0.0		614.5	$ 24,000.00
31	LaBonte, Karen	2.5	0.0	1.0	0.0	4.0	0.0	0.0	0.0	0.0	0.0	$ 71.19	7.5	$ 533.93
32	Maybury, Dana	0.0	0.0	4.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 30.22	20.0	$ 604.40
33	McIntyre, Patti	0.0	0.0	4.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 51.47	20.0	$ 1,029.40
34	Medina, Oscar	15.0	0.0	0.0	0.0	4.0	0.0	0.0	0.0	0.0	0.0	$ 51.15	19.0	$ 971.85
35	Meyers, Jane	0.0	0.0	4.0	4.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 70.23	16.0	$ 1,123.68
36	Morales, Christopher	0.0	0.0	0.0	0.0	12.0	0.0	0.0	0.0	0.0	0.0	$ 83.49	12.0	$ 1,001.88
37	Nicholson, Robert	80.5	0.0	21.5	0.0	17.0	1.0	0.0	0.0	0.0	0.0	$ 73.54	120.0	$ 8,821.12
38	Odenthal, Joanne	0.0	0.0	5.0	4.0	29.0	1.0	0.0	0.0	0.0	0.0	$ 60.94	39.0	$ 2,376.66
39	Pourzamani, Flora	0.0	0.0	0.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 66.75	8.0	$ 534.00
40	Ramirez, Oscar	0.0	67.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ 28.63	67.5	$ 1,932.53
41	Reed, Victoria	0.0	0.0	0.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 65.49	8.0	$ 532.92
42	Reising, Chris	0.0	0.0	0.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 70.22	8.0	$ 561.76
43	Rens, Kimberley	2.0	0.0	0.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 71.21	10.0	$ 712.10
44	Rienick, Jameson	0.0	0.0	4.0	0.0	32.0	0.0	0.0	0.0	0.0	0.0	$ 26.57	36.0	$ 956.52

Prepared by SixTen and Associates
September 8, 2005

Williams Case Implementation Test Claim
San Diego County Office of Education 2004-05 Estimated Cost
Source: SDCOE Declaration

		Preparation for the Mandate			Decile 1-3 Schools Inspections			Teacher Assignments		Uniform Complaint Procedure	Financial & Compliance Audits			
Entry #	Name of Declarant	Policies & Procedures	Reports & Forms	Training	Prep-Onsite Visits	Onsite Visits	Reports & Monitoring	District Evaluation	FCMAT Referrals	Quarterly Uniform Complaint Report	Audit Exceptions	PHR	Total # hours	Cost to SDCOE
45	Sapien, Rebecca	0.0	0.0	4.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 50.82	12.0	$ 609.84
46	Simpson, William	0.0	0.0	0.0	4.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 70.20	20.0	$ 1,404.00
47	Snyder, Sharon	0.0	0.0	4.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 68.21	12.0	$ 818.52
48	Spears, Tony	0.0	0.0	4.0	4.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 77.13	24.0	$ 1,851.12
49	Sterman, Daryl	0.0	0.0	4.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 65.45	20.0	$ 1,309.00
50	Stremski, Regina	0.0	0.0	4.0	0.0	24.0	0.0	0.0	0.0	0.0	0.0	$ 59.92	28.0	$ 1,677.76
51	Suber, Joyce	0.0	0.0	4.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 69.41	12.0	$ 832.92
52	Sulzer, Dennis	0.0	0.0	4.0	0.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 55.57	20.0	$ 1,111.40
53	Takashima, Barbara	60.0	55.0	40.0	45.0	51.0	20.0	0.0	0.0	0.0	0.0	$ 65.74	271.0	$ 17,815.54
54	Taylor, Nancy	0.0	0.0	0.0	8.0	24.0	0.0	0.0	0.0	0.0	0.0	$ 65.47	32.0	$ 2,095.04
55	Taylor-Austin, Lee	0.0	0.0	4.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 48.43	12.0	$ 581.16
56	Thompson-Nobile, Sandie	0.0	0.0	3.0	0.0	6.0	0.0	0.0	0.0	0.0	0.0	$ 60.82	9.0	$ 547.38
57	Toth, Melinda	25.0	0.0	0.0	229.9	0.0	0.0	0.0	0.0	0.0	0.0	$ 9.77	254.9	$ 2,490.37
58	Tyler, Myrtice	0.0	0.0	4.0	0.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 53.98	12.0	$ 647.76
59	Villeza, Emriss	21.5	3.8	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	$ 35.26	30.3	$ 1,066.62
60	Wagner, Karen	0.0	0.0	0.0	4.0	16.0	0.0	0.0	0.0	0.0	0.0	$ 61.14	20.0	$ 1,222.80
61	Wong, Sam	0.0	0.0	0.0	20.0	8.0	0.0	0.0	0.0	0.0	0.0	$ 69.76	28.0	$ 1,953.28
	TOTALS	**823.0**	**287.3**	**253.0**	**682.9**	**905.5**	**272.0**	**213.0**	**0.0**	**10.5**	**0.0**	**$ 3,559.31**	**3446.1**	**$ 185,083.78**

Prepared by SixTen and Associates
September 8, 2005

DECLARATION OF ERNEST ANASTOS
SWEETWATER UNION HIGH SCHOOL DISTRICT

Test Claim of San Diego County Office of Education
and Sweetwater Union High School District.

COSM No. _____

STATUTES

Statutes of 2004, Chapter 899 (SB 6), effective September 29, 2004
Statutes of 2004, Chapter 900 (SB 550), effective September 29, 2004
Statutes of 2004, Chapter 902 (AB 3001), effective September 29, 2004
Statutes of 2004, Chapter 903 (AB 2727), effective September 29, 2004
Statutes of 2005, Chapter 118 (AB 831), effective July 25, 2005

EDUCATION CODE SECTIONS

1240	14501	14502.1	17014	17032.5	17070.75
17089	17592.70	17592.72	17592.73	33126	35186
41020	42127.6	44110	44111	44112	44113
44258.9	60119	60252	Section 11, C. 904, S. 2004 (uncodified)		
Section 5, C. 899, S. 2004 (uncodified)					

REGULATIONS

Title 5, CCR, Sections 4600-4671 Uniform Complaint Procedure

Title 2, Sections 1859.300 through 1859.329, effective May 31, 2005, which implement the facilities portion of Statutes of 2004, Chapter 899, Senate Bill 6, effective September 29, 2004.

Related Executive Orders of the Office of Public School Construction and State Allocation Board:
Certification of Eligibility
Interim Evaluation Instrument
Needs Assessment Report, SAB 61-01
Needs Assessment Report Worksheet
Expenditure Report, SAB 61-02
Application for Reimbursement and Expenditure Report, SAB 61-03
Web-Based Progress Report Survey
Web-Based Needs Assessment

Williams Case Implementation

I, Ernest Anastos, Area Superintendent, District Office Region, Sweetwater Union High School District, make the following declaration and statement.

In my capacity as Area Superintendent, District Office Region, I am one of the administrative officials responsible for the implementation of the Williams Case mandate by the school district. I am familiar with the provisions and requirements of the Statutes, Education Code Sections and Title 2 and Title 5 Regulations enumerated above. These new laws and regulations result in increased costs to, and a new level of service for, school districts and county offices of education in their capacity as a local education agency which operates schools as a "school district," to implement the Williams Case legislation.

PART 1. NEW PROGRAM AND INCREASED LEVEL OF SERVICE

The Williams Case mandate results in increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel, to implement the following activities:

Education Code Section 1240

Education Code Section 1240 (c) (1) required the county superintendent of schools to visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including,

but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

Education Code Section 1240 (c) (2) (A), as amended by Statutes of 2004, Chapter 900, requires the county superintendent of schools, or his or her designee, to the extent that funds are appropriated for purposes of this paragraph, to annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, his or her observations while visiting the schools, among other things. School districts are required to provide information requested by the county office of education.

Education Code Section 1240 (c) (2) (C), as amended by Statutes of 2004, Chapter 900, requires the county superintendent to report the results of the visit to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements. School districts are required to include this information in their governing board agendas.

Education Code Section 1240 (c) (2), as amended by Statutes of 2004, Chapter 900, and Statutes of 2005, Chapter 118, requires the county superintendent to conduct the announced and unannounced visits to observe the condition of school repair and maintenance, the sufficiency of instructional materials, and content of the

school report card, at least annually. School districts are required to participate in the preparation for the visits, the site visit, and subsequent reporting and monitoring tasks as directed by the county office of education.

Education Code Section 1240 (i) previously required the county superintendent of schools to enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority. Education Code Section 1240 (i) (1) and (2), as amended by Statutes of 2004, Chapter 900, and Statutes of 2005, Chapter 118, requires the county superintendent of schools to enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority, as defined in subdivision (c) of Section 60119. School districts are required to comply with the county office of education enforcement actions.

Education Code Section 1240 (i) (3) (A), as amended by Statutes of 2004, Chapter 900, and Statutes of 2005, Chapter 118, requires the county superintendent to annually review any school ranked in any of deciles 1 to 3 at specified times. School districts are required to participate in the preparation for the visits, the site visit, and subsequent reporting and monitoring tasks as directed by the county office of education.

Education Code Section 1240 (i) (4), as amended by Statutes of 2004, Chapter 900, and Statutes of 2005, Chapter 118, requires the county superintendent, if it is determined that a school does not have sufficient textbooks or instructional materials,

to do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance. The school district is required to provide information to the county office of education for this report.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term. The school distrtict is required to perform the remediation as directed by the county office of education.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the Department of Education, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. The school district, before purchasing the textbooks or instructional materials, is required to consult with the State Department of Education. The school district is required to accept the amount of funds necessary to purchase the textbooks and materials as a loan to the school district and repay the amount owed based upon an

agreed-upon repayment schedule with the Superintendent of Public Instruction.

Education Code Section 14501

Education Code Section 14501 made school districts subject to state mandated financial and compliance audits. Education Code Section 14501, subdivision (b), as amended by Statutes of 2004, Chapter 900, requires the school districts to provide to auditors evidence of compliance of the following increased scope of activities:

(1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.

(2) Teacher misassignments pursuant to Section 44258.9.

(3) The accuracy of information reported on the School Accountability Report Card required by Section 33126. The requirements set forth in paragraphs (1) and (2) and this paragraph shall be added to the audit guide requirements pursuant to subdivision (b) of Section 14502.1.

Education Code Section 17070.75

Education Code Section 17070.75 specifies the fund accounting procedures required for school districts in order to participate in state deferred maintenance funding matches. Education Code Section 17070.75 (e), as amended by Statutes of 2004, Chapter 900, requires school districts to, as a condition of participation in the school facilities program or the receipt of funds pursuant to Section 17582, for a fiscal

year after the 2004-05 fiscal year, to establish a facility inspection system to ensure that each of its schools is maintained in good repair.

Education Code Section 17592.70

Education Code Section 17592.70 (d), as added by Statutes of 2004, Chapter 899 requires school districts, as a condition of receiving the School Facilities Needs Assessment Grant Program funds, to:

1 Use the funds to develop a comprehensive needs assessment, as defined in Section 17592.70 (d) (1) and (2), of eligible schoolsites, utilizing data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or information that is available in the California Basic Education Data System.

2 Use the comprehensive needs assessment as baseline data for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

3 Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment, as soon as possible, but not later than January 1, 2006.

4 Expend the remaining funds not needed for the assessment for making facilities repairs identified in its needs assessment and report to the Office of Public School Construction on the repairs completed and the cost of the repairs.

5 Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible

schools.

Education Code Section 17592.72

Education Code Section 17592.72, as added by Statutes of 2004, Chapter 899, requires school districts, as a condition of receiving the School Facilities Emergency Repair Account funds, to:

(1) Exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

(2) Supplement, not supplant, existing funds available for maintenance of school facilities.

(3) Use the funds for "emergency facilities needs" which means repair or replacement of structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school, and not for cosmetic or nonessential repairs.

Education Code Section 17592.73

Education Code Section 17592.73, as added by Statutes of 2004, Chapter 899, requires school districts, as a condition of receiving the funds provided by the statute, to comply with the regulations adopted by the State Allocation Board for the administration of the funds, including those necessary to specify the qualifications of the personnel performing the needs assessment and a method to ensure their independence.

Education Code Section 33126

Education Code Section 33126 specifies the content of the School Accountability Report Card. Education Code Section 33126 (b), as amended by Statutes of 2004, Chapter 900, requires school districts to provide the following new information:

1 The total number of teacher misassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

2 The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics, science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

3 A statement regarding any needed maintenance of the school to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

Education Code Section 33126 (c), as added by Statutes of 2004, Chapter 900, requires the school district to provide accurate school accountability report card

information in order to be eligible for reimbursement.

Education Code Section 35186

Title 5 of the California Code of Regulations, Chapter 5.1 (commencing with Section 4600), requires school districts to utilize a uniform complaint process. Education Code Section 35186, as added by Statutes of 2004, Chapter 900, as amended by Statutes of 2004, Chapter 902, and Statutes of 2005, Chapter 118, requires school districts to modify the uniform complaint process it has adopted to include complaints regarding instructional materials, facility condition, and teacher misassignment and vacancy, so that the new process provides that:

(1) A complaint may be filed anonymously and a complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. The complaint form shall specify the location for filing a complaint and allow the complainant to add as much text to explain the complaint as he or she wishes. A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner, but not to exceed 10 working days to the appropriate school district official for resolution.

(2) The principal or the designee of the district superintendent or designee shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days

from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same time frame to the designee of the district superintendent.

(3) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving the condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(4) The school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints

by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(5) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district before January 1, 2005, notifying parents and guardians of the following:

(A) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(B) School facilities must be clean, safe, and maintained in good repair.

(C) There should be no teacher vacancies or misassignments.

(D) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

Education Code Section 41020

Education Code Section 41020 requires county superintendents of schools to review the audit exceptions contained in an audit of a school district related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determine whether the exceptions have been either corrected or an acceptable plan of correction has been developed. Education Code Section 41020, as amended by

Statutes of 2004, Chapter 900, requires at subdivision (i) (2), that commencing with the 2004-05 fiscal year, the review include those audit exceptions related to use of instructional materials program funds, teacher misassignments, the school accountability report card, which determines whether the exceptions are either corrected or an acceptable plan of correction has been developed. With respect to these additional audit exceptions, school districts are required to prepare and implement a plan of correction.

Education Code Section 42127.6

Education Code Section 42127.6 is one of several sections which specify the oversight duties of the county office of education for school districts in fiscal distress. Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, requires school districts to provide the county superintendent of schools with a copy of any study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, requires the county superintendent to review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the

school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the fifteen most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent is required to investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. The county superintendent is then required to report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions. School districts are required to respond to the requests for information from the county office of education and Superintendent of Public Instruction.

Education Code Section 42127.6 subdivision (a) (1), as amended by Statutes of 2004, Chapter 902, authorizes the county superintendent to assign the Fiscal Crisis and Management Assistance Team to review school district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rates, extent of teacher misassignment, and provision of highly qualified teachers. If a review team is assigned, the school district is required to provide the

information and support requested and required to follow the recommendations of the team, unless the district shows good cause for failure to do so.

Education Code Section 42127.6 subdivision (a), as amended by Statutes of 2004, Chapter 902, requires school districts to provide the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25, to any district employee who provides information regarding improper governmental activity, as defined in Section 44112.

Education Code Section 44258.9

Education Code Section 44258.9 is one of several sections which specify the annual credential review and monitoring duties of the county office of education for school districts. Education Code Section 44258.9 subdivision (b) (1), as amended by Statutes of 2004, Chapter 902, and as amended by Statutes of 2005, Chapter 118, requires the county superintendent of schools to:

(A) Annually monitor and review schools and school districts of schools that are likely to have problems with teacher misassignments and teacher vacancies, and to annually review decile 1 to 3 schools for this purpose.

(B) Annually monitor and review schools and school districts with schools ranked in deciles 1 to 3, inclusive, if those schools are not currently under review through a state or federal intervention program, until the annual reviews indicate that there are no teacher misassignments or vacancies.

The school district is required to provide information to the county office of education

for this review.

Education Code Section 44258.9 subdivision (b) (2), as amended by Statutes of 2004, Chapter 902, requires the county superintendent of schools to investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training. The school district is required to provide information to the county office of education for this investigation.

Uncodified Requirements

Section 11 (not codified) of Statutes of 2004, Chapter 902, requires school districts to make resumes and job applications received by the district from credentialed teachers available first to the schools in the district ranked in deciles 1 to 3, and thereafter make the resumes and applications available to other schools maintained by the district.

Education Code Section 60119

Education Code Section 60119 establishes the eligibility requirements for the Pupil Textbook and Instructional Materials Incentive Program. Education Code Section 60119, subdivision (a) and (b), as amended by Statutes of 2004, Chapter 900, and Statutes of 2005, Chapter 118, requires school districts to perform the following additional activities in order to establish eligibility:

(1) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, or both, as defined by this section, in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History-social science.

(iv) English/language arts, including the English language development component of an adopted program.

(2) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack, year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004-05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(3) The governing board shall also make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(4) The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

Education Code Section 60252

Education Code Section 60252 establishes the compliance requirements for the Pupil Textbook and Instructional Materials Incentive Program. Education Code Section 60252 (a), as amended by Statutes of 2004, Chapter 900, requires school districts to ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.

Uncodified Requirements

Section 5, Statutes of 2004, Chapter 899, requires school districts and county

offices of education to use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations.

Title 2, California Administrative Code

The Office of Public School Construction (OPSC), State Allocation Board (SAB or Board), has adopted Title 2 regulations (sections 1859.300 through 1859.329), final regulations effective May 31, 2005, to implement the facilities portion of Statutes of 2004, Chapter 899, Senate Bill 6, effective September 29, 2004. In conjunction with this rulemaking, the OPSC and SAB created forms and reports for the implementation of the mandate which constitute executive orders, and require school districts to complete these forms and reports.

Section 1859.310 requires that a school site that qualifies for the School Facilities Needs Assessment Grant Program (decile 1-3 school constructed prior to January 1, 2000) shall be allocated funds by the Board in order to conduct a one-time comprehensive school facilities needs assessment and shall be required to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of Section 1859.311.

Section 1859.312 requires the Board to allocate $10 per pupil enrolled in eligible school sites with a minimum allocation of $7,500 for each school site.

Section 1859.313 specifies the use of the Needs Assessment Grant Funds to

include:

(a) Unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment.

(b) Repairs identified in Part V of the Form SAB 61-01 at any eligible school site where a Needs Assessment has been completed.

Section 1859.314 requires the person performing the Needs Assessment to have general knowledge of school facility construction, operation, and maintenance and either a minimum of three years of experience with cost estimation and building systems life cycle analysis; or, be an architect, engineer, or general contractor licensed under California law; to personally conduct the assessment on the school sites; and, the persons performing or supervising the Needs Assessment to be independent third parties and not be employees of the school district.

Section 1859.315 requires school districts that receive School Facilities Needs Assessment Grant funds to:

(a) Complete a Certification of Eligibility and submit it to the OPSC.

(b) Complete a Web-Based Progress Report Survey and submit it to the OPSC.

(c) Complete a Web-Based Needs Assessment for each applicable site and submit it to the OPSC by January 1, 2006.

(d) Complete Form SAB 61-02 to report all expenditures made with the Needs Assessment Grant funds by January 1, 2007.

Section 1859.316 states that a school district's Needs Assessment Grant

expenditures shall be subject to audit and funds subject to repayment to the state.

Section 1859.320 requires a school district seeking an Emergency Repair Program Grant to complete and file a Form SAB 61-03 with the OPSC.

Section 1859.325 states that school districts are subject to a review by the OPSC of the district's facility maintenance accounts.

Section 1859.326 states that the school district Emergency Repair Program expenditures are subject to audit by the OPSC and funds are subject to collection by the state.

PART 2. COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for the Sweetwater Union High School District.

1 PREPARING TO IMPLEMENT THE MANDATE

Policies, Procedures, Planning, Training: Staff time developing policies and procedures, planning, and training to implement the mandate.

Estimated Costs October 2004 through June 2005 $21,367

Estimated Costs July 2005 through June 2006 $10,000

2. FACILITIES INSPECTION

District School Facility Inspection System: Staff time implementing a School Facilities Inspection System (SFIS) to ensure that each of the district's schools is maintained in good repair, as a condition of receiving state building funds and deferred maintenance program funds.

Estimated Costs October 2004 through June 2005 $1,339

Estimated Costs July 2005 through June 2006 $2,000

3. INSTRUCTIONAL MATERIALS

Determination of Sufficient Instructional Materials Staff time:

-Preparing materials and information required for the governing board to annually, after a public hearing, make its determination that every pupil has sufficient textbooks and instructional materials for the specified course areas.

- Annually adopt a board resolution as to whether each pupil has sufficient instructional materials for the specified course areas. If an insufficiency of instructional materials is determined, providing information to teachers and the public regarding schools where the insufficiency exists, and the reasons for the insufficiency.

-Taking appropriate action using instructional materials funds to ensure that each pupil has sufficient instructional materials within two months of the school year for which the determination is made.

Estimated Costs October 2004 through June 2005 $14,182

Estimated Costs July 2005 through June 2006 $20,000

4. TEACHER ASSIGNMENT

Four-year Reviews and Monitoring: Additional staff time preparing for and participating in the district off-cycle monitoring evaluation process by the county office of education or the Fiscal Crisis and Management Assistance Team. Implementing the recommendations of the county office of education and/or the Fiscal Crisis and

Management Assistance Team or showing good cause for failure to do so.

Estimated Costs October 2004 through June 2005 $ 8,828

Estimated Costs July 2005 through June 2006 $ 9,000

5. SCHOOL ACCOUNTABILITY REPORT CARDS

New SARC Data: Staff time compiling the following data and revising the school and district SARC to include information on:

-Instructional materials for each student in four core areas (mathematics, science, history-social science and reading/language arts) and, for secondary schools, also in foreign language, health curriculum, and science lab equipment availability.

-Teacher misassignments, including misassignments of teachers of English learners, and number of teacher vacancies for the most recent three years.

-Facilities maintenance issues, including safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair.

-Making information available to parents and the community sometime during the school year (through the Internet or in hard copy form).

Estimated Costs October 2004 through June 2005 $ no data

Estimated Costs July 2005 through June 2006 $ no data

6. UNIFORM COMPLAINT PROCEDURE

Uniform Complaint Process Staff time:

-Updating the Uniform Complaint Process procedures and forms to address issues dealing with insufficient instructional materials, teacher vacancies and misassignment,

and the emergency or urgent facility issues.

-Preparing and posting a notice in each classroom to notify the public that there should be sufficient instructional materials, the facilities must be in good repair, and of the location for the parent or guardian to obtain a complaint form.

-Preparing and operating a complaint resolution process whereby the district designee shall receive and investigate and remedy any complaint within thirty working days, and reporting the results to the complainant within forty-five working days.

-The governing board to establish a process and consider appeals if the complainant is not satisfied with the district resolution of the complaint.

-Participating in the state's complaint resolution process if a complaint involves an emergency facility issue or an appeal of the governing board action filed with the Superintendent of Public Instruction

-Preparing and submitting a quarterly report to the county superintendent and district board for public hearing on the nature and resolution of the type of complaints specified.

Estimated Costs October 2004 through June 2005 $2,605

Estimated Costs July 2005 through June 2006 $5,000

7. FINANCIAL AND COMPLIANCE AUDITS

Financial Audit Exceptions Staff time for:

-Preparing and providing to the district's financial auditor a written correction plan to correct exceptions pertaining to use of instructional materials program funds, teacher

misassignments, and information reported on the school accountability report card.

-Responding to COE audit exception review findings.

-Paying any penalty for insufficiency of textbooks or instructional materials, teacher misassignments, or accuracy of information reported in SARC, which is not excused by the state.

Estimated Costs October 2004 through June 2005 $ 513

Estimated Costs July 2005 through June 2006 $1,000

8. COMPREHENSIVE SCHOOL FACILITY NEEDS ASSESSMENT

School Facilities Needs Assessment(SFNA) Staff time:

-Completing the one-time comprehensive school facilities needs assessment by January 2006 for Deciles 1-3 schools with buildings newly constructed prior to January 2000. Maintaining a copy of the school facilities needs assessment and a list of emergency or urgent repairs completed or to be completed on site.

-Making emergency and urgent repairs.

-Prepare the State Allocation Board required status reports, progress reports, and site assessment reports for submission to the county office of education and to the Office of Public School Instruction in order to obtain one-time School Facility Needs Assessment Grant Program funds ($10 per pupil, with a minimum amount of $7,500 per schoolsite) to reimburse the unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment and specified repairs after the Needs Assessment.

Complying with any audit requirements.

-For each building component or system, preparing and submitting to the State Allocation Board the request for SFERA reimbursement for the cost of emergency and urgent repair projects and certification of fund use. Complying with any audit requirements.

Estimated Costs October 2004 through June 2005 $ no data

Estimated Costs July 2005 through June 2006 $ no data

9. COE INSPECTIONS OF DISTRICT'S WILLIAMS DECILES 1-3 SCHOOLS

A Preparing for the COE Reviews: Staff time to prepare the reports and information required by the county office of education for its evaluation of the district's and decile 1-3 school compliance with Williams.

Estimated Costs October 2004 through June 2005 $9,881

Estimated Costs July 2005 through June 2006 $15,000

B Participating in the COE Reviews: Staff time to schedule site visits, staff and student interviews, documentation, and other administrative tasks to facilitate the reviews.

Estimated Costs October 2004 through June 2005 $1,625

Estimated Costs July 2005 through June 2006 $3,000

C Remediaton After COE Reviews: Staff time to prepare and implement corrective actions, facility repairs, apply for special funding, board action, updating policy and procedures, and other actions in response to the site inspection findings.

Estimated Costs October 2004 through June 2005 $ 0

Estimated Costs July 2005 through June 2006 $5,000

10. NON-LABOR WILLIAMS REMEDIATION COSTS

The amount of non-labor costs (materials, supplies, contractors, purchased services) incurred by the district for Williams remediation:

Expenditures Incurred or Budgeted		FY 2004-05	FY 2005-06
1.	School Facilities Needs Assessment	$ no data	$
2.	School Facilities Emergency Repairs	$ no data	$
3.	Instructional Materials	$ 347,821	$ 789,585
4.	Teacher Misassignment	$	$
5.	SARC	$	$
6.	Uniform Complaint Procedure	$	$
	TOTALS	$	$

PART 3. FUNDING SOURCES

Statutes of 2004, Chapter 899 (SB 6) appropriated funds to State Department of Education for transfer to the State Allocation Board for grants to school districts under the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Account. Statutes of 2004, Chapter 900 (SB 550) appropriated funds to the State Department of Education for transfer to the Instructional Materials Fund for purposes of acquiring instructional materials. From these appropriations, the Sweetwater Union High School District has received, or has receivable, the following amounts:

State Funds Received or Receivable		FY 2004-05	FY 2005-06
1.	School Facilities Needs Assessment	$ no data	$ no data
2.	School Facilities Emergency Repairs	$ no data	$ no data
3.	Instructional Materials	$1,137,406	$ unknown

No federal funds have been received by the District, or are receivable, which were specifically appropriated to implement this mandate. No other state or local monies were received by the District, or are receivable, which were specifically appropriated to implement this mandate. No federal, state, local government, or private grants or awards have been received by the District, or are receivable, which were specifically designated to implement this mandate. There is no authority in federal, state, or local law for this District to levy fees to offset the costs to implement this mandate.

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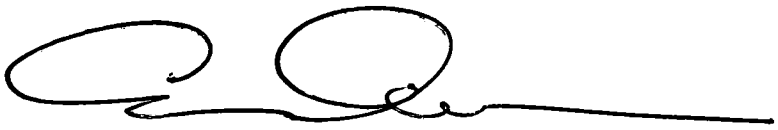
CERTIFICATION

I hereby declare under penalty of perjury under the laws of the State of California that the information in this declaration is true and complete to the best of my own knowledge or information or belief.

EXECUTED this 12 day of September, 2005, at Chula Vista, California



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SWEETWATER UNION HIGH SCHOOL DISTRICT
WILLIAMS TEST CLAIM
SUMMARY OF DECLARATION DETAILED COSTS
2004-05

DECILE 1-3
PREPARING **(1)** [1,2,3]

Employee Name	Time on Task	Hourly Wage and Benefits	Costs
P. Parr	15.0	39.78	597
J. Dominquez	77.4	76.43	5,916
M. Fraga-Lopez	15.0	42.99	645
M. Castilleja	3.0	81.25	244
R. Livesay	60.0	68.99	4,139
M. Litwiller	5.0	69.87	349
L. Nelson	8.0	35.81	286
E. Anastos	12.0	89.56	1,075
M. Stuckey	5.0	24.78	124
N. Stubbs	2.0	63.37	127
E. Brand	52.0	151.25	7,865
			21,367

DECILE 1-3
INSPECTIONS **(2)**

Employee Name	Time on Task	Hourly Wage and Benefits	Costs
Calculated Average	45.0	29.75	1,339

DECILE 1-3
TEACHER ASSIGNMENTS **(4)** [7, 8]

Employee Name	Time on Task	Hourly Wage and Benefits	Costs
E. Anastos	6.0	89.56	537
K. O'Brien	206.0	40.24	8,290
			8,828

DECILE 1-3
INSTRUCTIONAL MATERIALS **(3)** [4]

Employee Name	Time on Task	Hourly Wage and Benefits	Costs
J. Dominquez	10.0	76.43	764
M. Urias-Islas	15.0	76.43	1,146
G. Lopez	79.5	43.99	3,497
J. Neria	11.0	49.27	542
M. Castilleja	8.0	81.25	650
W. Fernal	16.0	24.89	398
R. Livesay	8.0	68.99	552
D. Jenkins	1.0	76.43	76
M. Gonzalez	3.0	71.40	214
J. Cobian	9.0	28.85	260
C. Gonzalez	40.0	53.42	2,137
K. Janney	5.0	81.26	406
A. Melendrez	8.0	71.40	571
O. Mays	8.0	28.85	231
N. Stubbs	4.5	63.37	285
L. Nelson	40.0	35.81	1,432
E. Anastos	1.0	89.56	90
L. Maestre	6.0	79.21	475
E. Brand	3.0	151.25	454
			14,182

DECILE 1-3
SARC (5)

Employee Name	Time on Task	Hourly Wage and Benefits	Costs

DECILE 1-3
COMPLAINT PROCEDURE (6) [9]

Employee Name	Time on Task	Hourly Wage and Benefits	Costs
J. Dominquez	20.0	76.43	1,529
R. Livesay	1.0	68.99	69
J. Cobian	4.0	28.85	115
A. Melendrez	1.0	71.40	71
O. Mays	1.0	28.85	29
L. Maestre	10.0	79.21	792
			2,605

DECILE 1-3
FINANCIAL (7) [10]

Employee Name	Time on Task	Hourly Wage and Benefits	Costs
R. Livesay	4.0	68.99	276
D. Martens	3.0	36.65	110
B. Atwood	1.5	36.78	55
D. Russo	1.0	72.24	72
			513

SWEETWATER UNION HIGH SCHOOL DISTRICT
WILLIAMS TEST CLAIM
SUMMARY OF DECLARATION DETAILED COSTS
2004-05

Employee Name	DECILE 1-3 NEEDS ASSESSMENT (8) Time on Task	Hourly Wage and Benefits	Costs

Employee Name	DECILE 1-3 REMEDIATION (10) [6] Time on Task	Hourly Wage and Benefits	Costs
J. Dominquez	8.5	76.43	650
R. Livesay	8.0	68.99	552
E. Brand	5.0	151.25	756
			1,958

Employee Name	DECILE 1-3 COE INSPECTIONS (9) [5] Time on Task	Hourly Wage and Benefits	Costs
J. Dominquez	40.0	76.43	3,057
M. Urias-Islas	1.0	76.43	76
G. Lopez	0.5	43.99	22
J. Neria	2.0	49.27	99
M. Castilleja	1.0	81.25	81
R. Livesay	12.0	68.99	828
D. Jenkins	1.0	76.43	76
M. Gonzalez	5.0	71.40	357
J. Cobian	3.0	28.85	87
K. Janney	1.0	81.26	81
M. Litwiller	52.0	69.87	3,633
M. Stuckey	52.0	24.78	1,289
N. Stubbs	0.3	63.37	19
L. Nelson	30.0	35.81	1,074
E. Anastos	1.0	89.56	90
L. Maestre	6.0	79.21	475
E. Brand	1.0	151.25	151
			11,496

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Patricia K. Parr
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1	3.0				
2	1.0				
3	11.0				
4					
5					
6					
7					
8					
9					
10					
	15.0				
		32.88	0.21	39.78	
					596.70

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Jorge Dominquez
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1	52.5				
2	14.6				
3	10.3				
4	10.0				
5	40.0				
6	8.5				
7					
8					
9	20.0				
10					
	155.9				
		63.16	0.21	76.43	
					11,915.17

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Martha Urias-Islas*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	15.0				
5	1.0				
6					
7					
8					
9					
10					
	16.0				
		63.16	0.21	76.43	
					1,222.85

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Gabriela Lopez
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	79.5				
5	0.5				
6					
7					
8					
9					
10					
	80.0				
		36.35	0.21	43.99	
					3,518.94

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Juan M. Neria*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	11.0				
5	2.0				
6					
7					
8					
9					
10					
	13.0	40.72	0.21	49.27	640.50

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Martha Fraga-Lopez*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1	5.0				
2	8.0				
3	2.0				
4					
5					
6					
7					
8					
9					
10					
	15.0	35.53	0.21	42.99	644.81

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Maria Castilleja
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3	3.0				
4	8.0				
5	1.0				
6					
7					
8					
9					
10					
	12.0	67.15	0.21	81.26	975.09

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Wilson Farnal
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	16.0				
5					
6					
7					
8					
9					
10					
	16.0	20.57	0.21	24.89	398.17

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Rick Livesy
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1	24.0				
2	16.0				
3	20.0				
4	8.0				
5	12.0				
6	8.0				
7					
8					
9	1.0				
10	4.0				
	93.0	57.02	0.21	68.99	6,416.30

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Doug Jenkins*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	6.0				
5	1.0				
6					
7					
8					
9					
10					
	7.0	63.16	0.21	76.43	535.00

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Manuel Gonzalez
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	3.0				
5	5.0				
6					
7					
8					
9					
10					
	8.0	59.01	0.21	71.40	571.20

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Livier Nelson
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3	8.0				
4					
5	40.0				
6	30.0				
7					
8					
9					
10					
	78.0	29.59	0.21	35.81	2,793.02

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Jose Cobian*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	9.0				
5	3.0				
6					
7					
8					
9	4.0				
10					
	16.0	23.84	0.21	28.85	461.54

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Ernie Anastos
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1	4				
2	4				
3	4				
4	1				
5	1				
6					
7	6				
8					
9					
10					
	20	74.02	0.21	89.56	1,791.20

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Camille Gonzalez
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	40.0				
5					
6					
7					
8					
9					
10					
	40.0	44.15	0.21	53.42	2,136.85

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Karen Janney*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	5.0				
5	1.0				
6					
7					
8					
9					
10					
	6.0	67.15	0.21	81.26	487.54

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Marsha Litwiller
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3	5.0				
4					
5	52.0				
6					
7					
8					
9					
10					
	57.0	57.74	0.21	69.87	3,982.38

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Martha Stuckey
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4					
5	52.0				
6					
7					
8					
9					
10					
	52.0	20.48	0.21	24.78	1,288.81

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Alfonso Melendrez*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	8.0				
5					
6					
7					
8					
9	1.0				
10					
	9.0	59.01	0.21	71.40	642.60

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Orbie Mays
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	8.0				
5					
6					
7					
8					
9	1.0				
10					
	9.0	23.84	0.21	28.85	259.62

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Nancy Stubbs*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3	2.0				
4	4.5				
5	0.3				
6					
7					
8					
9					
10					
	6.8	52.37	0.21	63.37	430.93

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Luis Maestre*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4	6.0				
5	6.0				
6					
7					
8					
9	10.0				
10					
	22.0	65.47	0.21	79.21	1,742.70

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Edward Brand*
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1	52.0				
2					
3					
4	3.0				
5	1.0				
6	5.0				
7					
8					
9					
10					
	61.0	125.00	0.21	151.25	9,226.25

* Costs derived from district survey of actual time on task.

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Kathryn O'Brien
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3	6.0				
4					
5					
6	120.0				
7	40.0				
8					
9					
10	40.0				
	206.0	33.26	0.21	40.24	8,290.39

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Doug Martens
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4					
5					
6					
7					
8					
9					
10	3				
	3				
		30.29	0.21	36.65	
					109.94

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Barbara Atwood
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4					
5					
6					
7					
8					
9					
10	1.5				
	1.5				
		30.39	0.21	36.78	
					55.16

SWEETWATER UNION HIGH SCHOOL DISTRICT
Williams Settlement Salary Cost Estimate
Dianne Russo
2004-05

Task No.	Hours on Task	Productive Hourly Rate	Benefit Factor	Total Productive Rate	Total Estimated Costs
1					
2					
3					
4					
5					
6					
7					
8					
9					
10	1				
	1				
		59.70	0.21	72.24	
					72.24

DECLARATION OF Victoria Carreon

San Diego County Office of Education

Test Claim of San Diego County Office of Education
and Sweetwater Union High School District

COSM No. _____

Statutes of 2004, Chapter 899 (SB 6)
Statutes of 2004, Chapter 900 (SB 550)
Statutes of 2004, Chapter 902 (AB 3001)
Statutes of 2004, Chapter 903 (AB 2727)

Williams Case Implementation

I, **Victoria Carreon,** the undersigned, declare:

I am over the age of 18 and otherwise competent to testify in any court or administrative proceeding. I have been employed by the San Diego County Office of Education since **June 2003**. At the present time, I am a **Consultant, Business Advisory Services** for the San Diego County Office of Education. I am familiar with the provisions and requirements of the statutes enumerated above. For the period October 1, 2004 through June 30, 2005, I performed the following functions required to implement the state mandate for the indicated estimated hours:

PREPARATION FOR THE MANDATE

1. Policies and Procedures: Developing and adopting policies and procedures to implement the mandate. 52.5 hours.

2. Reports and Forms: Developing the reports, forms, and format to be used for reviews, evaluations, and audits of school districts. 11 hours.

3. Training: Preparing, presenting, and attending training on how to

 SAMPLE

implement the mandate. 22.5 hours.

DECILE 1-3 SCHOOLS INSPECTIONS

4. Preparing for Onsite Visits: Preparing the materials needed for the visit, scheduling personnel and locations, notification of districts, and other related administrative tasks. 3 hours.

5. Conducting the Onsite Visit: Inspections, staff interviews, data research, and related tasks. 13 hours.

6. Reports and Monitoring: Data evaluation, report preparation, notification to district, compliance reporting to the state, and FCMAT referrals. .5 hours.

UNIFORM COMPLAINT PROCEDURE

7. Quarterly Uniform Complaint Report: Receiving and processing the quarterly complaint report from school districts. 10.5 hours.

Based on my productive hourly rate of $68.32, it is estimated that the San Diego County Office of Education incurred $7720.16 to compensate me for the total time of 113 hours spent implementing these activities for the period October 1, 2004 through June 30, 2005, and for which the San Diego County Office of Education did not receive state funding for this purpose and 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 under the

laws of the State of California that the foregoing is true and correct except where stated upon information or belief and where so stated I declare that I believe them to be true.

EXECUTED this 8th day of September, 2005, at San Diego, California.

Victoria Carreon

Victoria Carreon
Consultant, Business Advisory Services
San Diego County Office of Education

Document	Pages	Total Pages
Statutes of 2004, Chapter 899 (SB 6)	5240-5245	3
Statutes of 2004, Chapter 900 (SB 550)	5245-5275	16
Statutes of 2004, Chapter 902 (AB 3001)	5281-5295	8
Statutes of 2004, Chapter 903 (AB 2727)	5294-5297	2
Statutes of 2005, Chapter 118 (AB 831)	1589-1613	13

(2)(A) If eligibility for the preliminary apportionment was calculated pursuant to Section 17071.76, the current year or five-year projected enrollment as recorded on a cohort survival enrollment projection system, developed and approved by the board, that uses pupil residence in the high school attendance area, for the year in which the application for the final apportionment is submitted.

(B) A district that uses the method described in this paragraph to calculate enrollment shall also use this method to calculate enrollment for all applications it submits for final apportionments for projects for which preliminary apportionments were approved from the same bond authorization.

SCHOOLS AND SCHOOL DISTRICTS—REPAIRS—FUNDS

CHAPTER 899

S.B. No. 6

AN ACT to add Section 41207.5 to, and to add Article 1.5 (commencing with Section 17592.70) to Chapter 5 of Part 10.5 of, the Education Code, relating to school facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 6, Alpert. School facilities: needs assessment: emergency repairs.

Existing law requires the governing board of any school district to furnish and repair the school property of its district and authorizes each school district to establish a restricted fund, known as the district deferred maintenance fund, for the purpose of major repair or replacement of specified items. Existing law requires the State Allocation Board to apportion from the State School Deferred Maintenance Fund, to eligible school districts, an amount equal to $1 for each $1 of local funds deposited in the district's deferred maintenance fund.

This bill would establish the School Facilities Needs Assessment Grant Program, to be administered by the State Allocation Board, for the purpose of awarding grants to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, as specified, to conduct a one-time comprehensive assessment of school facilities needs, as provided.

The bill would establish in the State Treasury the School Facilities Emergency Repair Account, to be administered by State Allocation Board, for the purpose of reimbursing school districts with schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, as specified, for emergency facility repairs, as provided. The bill would specify the source of the funds to be deposited into this account, including from the Proposition 98 Reversion Account, and would prescribe other requirements relating to the transfer of those funds.

The bill would require the State Allocation Board, for purposes of the above new program and account, to adopt regulations, establish and publish any procedures and policies for their administration, apportion funds to eligible school districts, provide technical assistance to school districts, and make specified reports to the Governor and the Legislature.

This bill would establish in the General Fund the Proposition 98 Reversion Account and would require the Legislature to transfer into this account moneys previously appropriated in satisfaction of the requirements of Section 8 of Article XVI of the California Constitution that have not been disbursed or otherwise encumbered for the purposes for which they were appropriated. The bill would require moneys that are appropriated in satisfaction of the minimum funding obligation under Section 8 of Article XVI of the California Constitution that would otherwise revert to the unexpended balance of the General Fund to be instead deposited in this new account.

This bill would appropriate $250,000 from the General Fund to the State Allocation Board for the administration of the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Account for the 2004–05 fiscal year.

This bill would appropriate $30,000,000 from the General Fund, of which $25,000,000 would be appropriated to the State Department of Education for transfer to the State Allocation Board for grants to school districts under the School Facilities Needs Assessment Grant Program and $5,000,000 would be appropriated for transfer to the School Facilities Emergency Repair Account. The bill would require the Controller to transfer those funds, as provided, upon receipt of certification from the Office of Public School Construction. The bill would provide that for the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation is General Fund revenues appropriated for school districts for the 2003–04 fiscal year.

This bill would state that the intent of the Legislature in enacting this act is to implement the settlement agreement in the case of Williams v. State of California.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Article 1.5 (commencing with Section 17592.70) is added to Chapter 5 of Part 10.5 of the Education Code, to read:

Article 1.5. School Assessments of Buildings and Emergency Repairs Grant Program

17592.70. (a) There is hereby established the School Facilities Needs Assessment Grant Program with the purpose to provide for a one-time comprehensive assessment of school facilities needs. The grant program shall be administered by the State Allocation Board.

(b)(1) The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school newly constructed prior to January 1, 2000.

(2) For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2003 base Academic Performance Index (API) shall include any schools determined by the State Department of Education to meet either of the following:

(A) The school meets all of the following criteria:

(i) Does not have a valid base API score for 2003.

(ii) Is operating in fiscal year 2004–05 and was operating in fiscal year 2003–04 during the Standardized Testing and Reporting (STAR) Program testing period.

(iii) Has a valid base API score for 2002 that was ranked in deciles 1 to 3, inclusive, in that year.

(B) The school has an estimated base API score for 2003 that would be in deciles 1 to 3, inclusive.

(3) The State Department of Education shall estimate an API score for any school meeting the criteria of clauses (i) and (ii) of subparagraph (A) of paragraph (2) and not meeting the criteria of clause (iii) of subparagraph (A) of that paragraph, using available testing scores and any weighting or corrective factors it deems appropriate. The department shall provide those API scores to the Office of Public School Construction and post them on its Web site within 30 days of the enactment of this section.

(c) The board shall allocate funds pursuant to subdivision (b) to school districts with jurisdiction over eligible schoolsites, based on ten dollars ($10) per pupil enrolled in the eligible school as of October 2003, with a minimum allocation of seven thousand five hundred dollars ($7,500) for each schoolsite.

(d) As a condition of receiving funds pursuant to this section, school districts shall do all of the following:

(1) Use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at a minimum, all of the following information for each schoolsite:

(A) The year each building that is currently used for instructional purposes was constructed.

(B) The year, if any, each building that is currently used for instructional purposes was last modernized.

(C) The pupil capacity of the school.

(D) The number of pupils enrolled in the school.

(E) The density of the school campus measured in pupils per acre.

(F) The total number of classrooms at the school.

(G) The age and number of portable classrooms at the school.

(H) Whether the school is operating on a multitrack, year-round calendar, and, if so, what type.

(I) Whether the school has a cafeteria, or an auditorium or other space used for pupil eating and not for class instruction.

(J) The useful life remaining of all major building systems for each structure housing instructional space, including, but not limited to, sewer, water, gas, electrical, roofing, and fire and life safety protection.

(K) The estimated costs for five years necessary to maintain functionality of each instructional space to maintain health, safety, and suitable learning environment, as applicable, including classroom, counseling areas, administrative space, libraries, gymnasiums, multipurpose and dining space, and the accessibility to those spaces.

(L) A list of necessary repairs.

(2) Use the data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or information that is available in the California Basic Education Data System for the element required in subparagraphs (D), (E), (F), and (G) of paragraph (1).

(3) Use the assessment as the baseline for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

(4) Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment. It is the intent of the Legislature that the assessments be completed as soon as possible, but not later than January 1, 2006.

(5) If a school district does not need the full amount of the allocation it receives pursuant to this section, the school district shall expend the remaining funds for making facilities repairs identified in its needs assessment. The school district shall report to the Office of Public School Construction on the repairs completed pursuant to this paragraph and the cost of the repairs.

(6) Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible schools.

17592.71. (a) There is hereby established in the State Treasury the School Facilities Emergency Repair Account. The State Allocation Board shall administer the account.

(b) Commencing with the 2005–06 fiscal year, an amount of moneys shall be transferred in the annual Budget Act from the Proposition 98 Reversion Account to the School Facilities Emergency Repair Account equaling 50 percent of the unappropriated balance of the Proposition 98 Reversion Account or one hundred million dollars ($100,000,000), whichever amount is greater. Moneys transferred pursuant to this subdivision shall be used for the purpose of addressing emergency facilities needs pursuant to Section 17592.72.

(c) The Legislature may transfer to the School Facilities Emergency Repair Account other one-time Proposition 98 funds, except funds specified pursuant to Section 41207. Donations by private entities shall be deposited in the account and, for tax purposes, be treated as otherwise provided by law.

(d) Funds shall be transferred pursuant to this section until a total of eight hundred million dollars ($800,000,000) has been disbursed from the School Facilities Emergency Repair Account.

17592.72. (a) All moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to meet the repair costs of the school district projects that meet the criteria specified in subdivisions (c) and (d) and as approved by the State Allocation Board.

(b)(1) It is the intent of the Legislature that each school district exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

(2) Funds made available pursuant to this article shall supplement, not supplant, existing funds available for maintenance of school facilities.

(3) The board is authorized to deny future funding pursuant to this article to a school district if the board determines that there is a pattern of failure to exercise due diligence pursuant to paragraph (1) or supplantation. If the board finds a pattern of failure to exercise due diligence, the board shall notify the county superintendent of schools in which the school district is located.

(c)(1) For purposes of this article, "emergency facilities needs" means structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. These projects may include, but are not limited to, the following types of facility repair or replacements of:

(A) Gas leaks.

(B) Nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems.

(C) Electrical power failure.

(D) Major sewer line stoppage.

(E) Major pest or vermin infestation.

(F) Broken windows or exterior doors or gates that will not lock and that pose a security risk.

(G) Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff.

(H) Structural damage creating a hazardous or uninhabitable condition.

(2) For purposes of this section, "emergency facilities needs" does not include any cosmetic or nonessential repairs.

(d) For the purpose of this section, structures or components shall only be replaced if it is more cost-effective than repair.

17592.73. (a) The State Allocation Board shall do all of the following:

(1) Adopt regulations and review and amend its regulations, as necessary, pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), for the administration of this article, including those necessary to specify the qualifications of the personnel performing the needs assessment and a method to ensure their independence. The initial regulations adopted pursuant to this article shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this article shall be adopted by January 31, 2005.

(2) Establish and publish any procedures and policies in connection with the administration of this article as it deems necessary.

(3) Apportion funds to eligible school districts under this article.

(4) Provide technical assistance to school districts to implement this article.

(5) Submit an interim status report to the Legislature and the Governor by June 30, 2005, by compiling the reports submitted pursuant to paragraph (6) of subdivision (d) of Section 17592.70.

(6) By June 30, 2008, report to the Legislature and the Governor on expenditures pursuant to Section 17592.72 and projections of future expenditures pursuant to Section 17592.72.

SEC. 2. Section 41207.5 is added to the Education Code, to read:

41207.5. There is hereby established in the General Fund the Proposition 98 Reversion Account. The Legislature shall, from time to time, transfer into the Proposition 98 Reversion Account moneys previously appropriated in satisfaction of the requirements of Section 8 of Article XVI of the California Constitution that have not been disbursed or otherwise encumbered for the purposes for which they were appropriated. Moneys that are appropriated in satisfaction of the minimum funding obligation under Section 8 of Article XVI of the California Constitution that would otherwise revert to the unexpended balance of the General Fund shall instead be deposited in the Proposition 98 Reversion Account.

SEC. 3. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the State Allocation Board for the administration of Article 1.5 (commencing with Section 17592.70) of Chapter 5 of Part 10.5 of the Education Code for the 2004–05 fiscal year.

SEC. 4. (a) The sum of thirty million dollars ($30,000,000) is hereby appropriated from the General Fund according to the following schedule:

(1) The sum of twenty-five million dollars ($25,000,000) to the State Department of Education for transfer to the State Allocation Board for grants to school districts pursuant to Section 17592.70 of the Education Code.

(2) The sum of five million dollars ($5,000,000) for transfer to the School Facilities Emergency Repair Account for grants to school districts pursuant to Section 17592.72 of the Education Code.

(3) The Controller shall transfer any amount certified by the Office of Public School Construction to be needed to fully fund the grants provided pursuant to Section 17592.70 of the Education Code from the appropriation in paragraph (2) to the appropriation in paragraph (1). The Controller shall transfer any amount certified by the Office of Public School Construction to be unneeded to fully fund the grants provided pursuant to Section 17592.70 of the Education Code from the appropriation in paragraph (1) to the appropriation in paragraph (2). The Controller shall not make the transfer provided in paragraph (2) until receiving a certification from the Office of Public School Construction pursuant to this paragraph.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

SEC. 5. It is the intent of the Legislature in enacting this act to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) and that local educational agencies, county offices of education, and state agencies with responsibility for implementing this act begin implementation as soon as practicable and with due diligence. Local educational agencies and county offices of education should use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations. The state recognizes that due to the date of enactment of this act and the time it will take to allocate the funding to local educational agencies and county offices of education, that full implementation of some of the provisions for school terms beginning in 2004–05 is impracticable.

SEC. 6. 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 improve the condition of school facilities and to ensure the safety of pupils at public schools and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) as soon as possible, it is necessary for this act to take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—SUPERINTENDENTS—MAINTENANCE AND REPAIRS

CHAPTER 900

S.B. No. 550

AN ACT to amend Sections 1240, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 33126, 33126.1, 41020, 52055.625, 52055.640, 60119, 60240, and 60252 of, to add Sections 35186, 41344.4, and 52055.662 to, and to repeal Section 62000.4 of, the Education Code, and to amend Section 36 of Chapter 216 of the Statutes of 2004, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 550, Vasconcellos. Education.

(1) Existing law requires a county superintendent of schools, among other things, to visit and examine each school in the county to observe its operation and learn of its problems. Existing law authorizes the county superintendent to annually present a report on the state of the schools in the county to the board of education and the board of supervisors of the county.

This bill would require the county superintendent to annually present a report to the governing board of each school district under his or her jurisdiction and to the board of supervisors of the county describing the state of the schools in the county and of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, thereby imposing a state-mandated local program. The bill would require the county superintendent for the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco to contract with a neighboring county office of education or an independent auditor to conduct the required visits and make all required reports. The bill would make the priority objective of the visits to determine if there are sufficient textbooks, conditions of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff, and accurate data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, the safety, cleanliness, adequacy, and good repair of school facilities.

(2) Existing law requires a county superintendent of schools, among other things, to enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority.

This bill would require the county superintendent, for purposes of enforcing the use of required textbooks and instructional materials, to specifically review at least annually schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index and that are not currently under review through a state or federal intervention program, thereby imposing a state-mandated local program. If the county superintendent determines that a school does not have sufficient textbooks or instructional materials, the bill would require the county superintendent to prepare a report that identifies and documents the areas or instances of noncompliance, provide a copy of the report to the school district, forward the report to the Superintendent of Public Instruction, and provide the school district with the opportunity to remedy the deficiency. If the deficiency is not remedied, the bill

(5) Submit an interim status report to the Legislature and the Governor by June 30, 2005, by compiling the reports submitted pursuant to paragraph (6) of subdivision (d) of Section 17592.70.

(6) By June 30, 2008, report to the Legislature and the Governor on expenditures pursuant to Section 17592.72 and projections of future expenditures pursuant to Section 17592.72.

SEC. 2. Section 41207.5 is added to the Education Code, to read:

41207.5. There is hereby established in the General Fund the Proposition 98 Reversion Account. The Legislature shall, from time to time, transfer into the Proposition 98 Reversion Account moneys previously appropriated in satisfaction of the requirements of Section 8 of Article XVI of the California Constitution that have not been disbursed or otherwise encumbered for the purposes for which they were appropriated. Moneys that are appropriated in satisfaction of the minimum funding obligation under Section 8 of Article XVI of the California Constitution that would otherwise revert to the unexpended balance of the General Fund shall instead be deposited in the Proposition 98 Reversion Account.

SEC. 3. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the State Allocation Board for the administration of Article 1.5 (commencing with Section 17592.70) of Chapter 5 of Part 10.5 of the Education Code for the 2004–05 fiscal year.

SEC. 4. (a) The sum of thirty million dollars ($30,000,000) is hereby appropriated from the General Fund according to the following schedule:

(1) The sum of twenty-five million dollars ($25,000,000) to the State Department of Education for transfer to the State Allocation Board for grants to school districts pursuant to Section 17592.70 of the Education Code.

(2) The sum of five million dollars ($5,000,000) for transfer to the School Facilities Emergency Repair Account for grants to school districts pursuant to Section 17592.72 of the Education Code.

(3) The Controller shall transfer any amount certified by the Office of Public School Construction to be needed to fully fund the grants provided pursuant to Section 17592.70 of the Education Code from the appropriation in paragraph (2) to the appropriation in paragraph (1). The Controller shall transfer any amount certified by the Office of Public School Construction to be unneeded to fully fund the grants provided pursuant to Section 17592.70 of the Education Code from the appropriation in paragraph (1) to the appropriation in paragraph (2). The Controller shall not make the transfer provided in paragraph (2) until receiving a certification from the Office of Public School Construction pursuant to this paragraph.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

SEC. 5. It is the intent of the Legislature in enacting this act to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) and that local educational agencies, county offices of education, and state agencies with responsibility for implementing this act begin implementation as soon as practicable and with due diligence. Local educational agencies and county offices of education should use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations. The state recognizes that due to the date of enactment of this act and the time it will take to allocate the funding to local educational agencies and county offices of education, that full implementation of some of the provisions for school terms beginning in 2004–05 is impracticable.

SEC. 6. 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 improve the condition of school facilities and to ensure the safety of pupils at public schools and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) as soon as possible, it is necessary for this act to take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—SUPERINTENDENTS—MAINTENANCE AND REPAIRS

CHAPTER 900

S.B. No. 550

AN ACT to amend Sections 1240, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 33126, 33126.1, 41020, 52055.625, 52055.640, 60119, 60240, and 60252 of, to add Sections 35186, 41344.4, and 52055.662 to, and to repeal Section 62000.4 of, the Education Code, and to amend Section 36 of Chapter 216 of the Statutes of 2004, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 550, Vasconcellos. Education.

(1) Existing law requires a county superintendent of schools, among other things, to visit and examine each school in the county to observe its operation and learn of its problems. Existing law authorizes the county superintendent to annually present a report on the state of the schools in the county to the board of education and the board of supervisors of the county.

This bill would require the county superintendent to annually present a report to the governing board of each school district under his or her jurisdiction and to the board of supervisors of the county describing the state of the schools in the county and of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, thereby imposing a state-mandated local program. The bill would require the county superintendent for the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco to contract with a neighboring county office of education or an independent auditor to conduct the required visits and make all required reports. The bill would make the priority objective of the visits to determine if there are sufficient textbooks, conditions of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff, and accurate data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, the safety, cleanliness, adequacy, and good repair of school facilities.

(2) Existing law requires a county superintendent of schools, among other things, to enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority.

This bill would require the county superintendent, for purposes of enforcing the use of required textbooks and instructional materials, to specifically review at least annually schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index and that are not currently under review through a state or federal intervention program, thereby imposing a state-mandated local program. If the county superintendent determines that a school does not have sufficient textbooks or instructional materials, the bill would require the county superintendent to prepare a report that identifies and documents the areas or instances of noncompliance, provide a copy of the report to the school district, forward the report to the Superintendent of Public Instruction, and provide the school district with the opportunity to remedy the deficiency. If the deficiency is not remedied, the bill

would require the county superintendent to request the State Department of Education, with approval by the State Board of Education, to purchase textbooks or instructional materials for the school. The bill would require that the funds necessary for the purchase be considered a loan to the school district to be repaid based upon an agreed-upon schedule with the Superintendent of Public Instruction, or by deducting an amount from the district's next principal apportionment or other apportionment of state funds. The bill would authorize the department to expend up to $5,000,000 from the State Instructional Materials Fund to acquire instructional materials for school districts for purposes of these provisions.

(3) Existing law, the Leroy F. Greene State School Building Lease–Purchase Law of 1976, the Leroy F. Greene State School Building Lease–Purchase Law of 1998, and the State Relocatable Classroom Law of 1979, requires the State Allocation Board to require a school district that receives funds for a school construction or modernization project pursuant to those laws, to make all necessary repairs, renewals, and replacement to ensure that a project is at all times kept in good repair, working order, and condition.

Existing law requires the State Allocation Board to establish the annual rent and conditions to be met by a school district to which it leases portable classrooms and requires a school district to undertake all necessary repairs, renewals, and replacement to ensure that those portable classrooms are at all times kept in good repair, working order, and condition.

This bill would, as a condition of participation in the school facilities program and the receipt of funds pursuant to the deferred maintenance program, require a school district to establish a facilities inspection system to ensure that each of its schools is in good repair, as defined in the bill.

(4) Existing law requires the Controller, in consultation with the Department of Finance and the State Department of Education, to develop a plan to review and report on financial and compliance audits, and with representatives of other entities, to recommend the statements and other information to be included in the audit reports filed with the state by local educational agencies and to propose the content of an audit guide.

This bill would require a compliance audit to include the verification of the reporting requirements for the sufficiency of textbooks and instructional materials, teacher misassignments, and the accuracy of information reported on the school accountability report card.

(5) Existing law, the Classroom Instructional Improvement and Accountability Act, requires each school district to develop and implement a school accountability report card, as prescribed. The existing act prohibits any change to its provisions, except a change to further its purpose enacted by a bill passed by a vote of ⅔ of the Legislature and signed by the Governor.

This bill would require the school accountability report card to include information regarding the availability of sufficient textbooks and other instructional materials for each pupil, any needed maintenance of school facilities to ensure good repair, the misassignments of teachers, including misassignments of English learner teachers, and the number of vacant teacher positions for the most recent 3–year period. The bill would define "misassignment" and "vacant position" for this purpose. By requiring school districts to include this additional information on the school accountability report card, the bill would impose a state-mandated local program. The bill would also provide that if the Commission on State Mandates finds a school district eligible for the reimbursement of costs incurred in complying with the requirements regarding the school accountability report card, the school district is to be reimbursed only if the information provided in the school accountability report card is accurate, as determined by a specified annual audit, or if the information is determined to be inaccurate, the information is corrected by May 15.

Existing law requires the State Department of Education to develop and recommend for adoption a standardized template for the school accountability report card and requires the standardized template to include fields for the insertion of data and information by the department and by local educational agencies.

This bill would require that template to also include a field to report the determination of the sufficiency of textbooks and instructional materials and a summary statement of the condition of school facilities. The bill would require the department to provide examples of

summary statements of the condition of school facilities that are acceptable and those that are unacceptable.

This bill would declare that these provisions further the purposes of the Classroom Instructional Improvement and Accountability Act.

(6) Existing regulations require each local educational agency to adopt policies and procedures for the investigation and resolution of complaints and require each local educational agency to include in its policies and procedures the person, employee, or agency position or unit responsible for receiving complaints, investigating complaints, and ensuring local educational agency compliance.

This bill would require a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment. The bill would require a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage. By requiring the posting of this notice, the bill would impose a state-mandated local program.

(7) Existing law requires a county superintendent of schools to provide for an audit of all funds under his or her jurisdiction and requires the governing board of a local educational agency to either provide for an audit of the books and accounts of the local educational agency or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing. Existing law requires a county superintendent of schools to be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions were either corrected or an acceptable plan of correction was developed.

This bill would, commencing with the 2004–05 audit of local educational agencies, require the county superintendent of schools to include in the review of audit exceptions those audit exceptions related to use of instructional materials program funds, teacher misassignments, and information reported on the school accountability report card and to determine whether the exceptions are either corrected or an acceptable plan of correction developed, thereby imposing a state-mandated local program.

The bill would prohibit a local educational agency from being required to repay an apportionment based on a significant audit exception related to the verification of the sufficiency of textbooks and instructional materials, teacher misassignments, and the accuracy of the information reported on the school accountability report card if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception was corrected or that an acceptable plan of correction was submitted to the county superintendent of schools.

(8) Existing law establishes, within the Public Schools Accountability Act of 1999, the High Priority Schools Grant Program and requires a school district participating in the program to develop a school action plan that includes 4 components: (a) pupil literacy and achievement, (b) quality of staff, (c) parental involvement, and (d) facilities, curriculum, instructional materials, and support services.

This bill would, for schools initially applying to participate in the program on or after the 2004–05 fiscal year, require the component of the school action plan on quality of staff to include highly qualified teachers and appropriately credentialed teachers for English learners. The bill would specify that the component on facilities, curriculum, instructional materials, and support services for those schools be on facilities in good repair, curriculum, sufficient instructional materials, and support services.

Existing law requires that a school receiving funds under the High Priority Schools Grant Program submit a report to the Superintendent of Public Instruction that includes, among other things, the availability of instructional materials in core content areas that are aligned with the academic content and performance standards for each pupil.

This bill would require schools initially applying to participate in the program on or after the 2004–05 fiscal year to measure the availability of instructional materials against a specified definition of "sufficient instructional materials."

(9) Existing law requires the governing board of a school district to hold a public hearing and make a determination as to whether each pupil in each school in the district has or will have prior to the end of that fiscal year sufficient textbooks or instructional materials in each subject that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education.

This bill would instead require the determination to be as to whether each pupil in each school in the district has sufficient textbooks or instructional materials in each subject that are consistent with the content and cycles of the curriculum frameworks. The bill would require the hearing to be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and would prohibit the hearing from taking place during or immediately following school hours. The bill would define "sufficient textbooks or instructional materials" to mean that each pupil, including English learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments but would specify that 2 sets of textbooks or instructional materials for each pupil are not required.

(10) Existing law repeals the Instructional Materials Program on June 30, 2006, and makes implementation of the program during the 2002–03 to 2005–06, inclusive, fiscal years contingent on funding in the annual Budget Act.

This bill would delete the date of repeal and the contingent implementation of the program.

(11) Existing law appropriated $138,000,000 from the General Fund to the State Department of Education for transfer to the Instructional Materials Fund.

This bill would make technical changes to that appropriation and would make other conforming changes.

(12) This bill would appropriate $20,200,000 from the General Fund to the State Department of Education and, of that amount $5,000,000 would be appropriated for transfer to the State Instructional Materials Fund for purposes of acquiring instructional materials, as specified, $15,000,000 would be appropriated for allocation to county offices of education for review and monitoring of schools, as specified, and $200,000 would be appropriated for purposes of implementing this act.

The funds appropriated by the bill for purposes of acquiring instrucional materials and for review and monitoring activities would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(13) The bill would state that the intent of the Legislature in enacting this act is to implement the settlement agreement in the case of Williams v. State of California.

(14) 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.

(15) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools * * * shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c)(1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2)(A) To the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools.

(B) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(C) The results of the visit shall be reported to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

(D) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Not disrupt the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance and the sufficiency of instructional materials, as defined by Section 60119.

(E) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually present a report to the * * * governing board of the school district and the Superintendent of Public Instruction regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that * * * is determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent of Public Instruction.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i)(1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3) If a school is ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and is not currently under review through a state or federal intervention program, the county superintendent shall specifically review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be conducted within the first four weeks of the school year. For the 2004-05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary to the purchase the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent of Public Instruction, the Superintendent of Public Instruction shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials, from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the * * * department.

(*l*)(1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of

the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent of Public Instruction may reclassify any certification. If a county office of education receives a negative certification, the Superintendent of Public Instruction, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent of Public Instruction at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification * * * and * * * the report containing that certification * * * shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent of Public Instruction.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) * * * If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 14501 of the Education Code is amended to read:

14501. (a) As used in this chapter, "financial and compliance audit" shall be consistent with the definition provided in the "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions" promulgated by the Comptroller General of the United States. Financial and compliance audits conducted under this chapter shall fulfill federal single audit requirements.

(b) As used in this chapter, "compliance audit" means an audit that ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both and includes the verification of each of the following:

(1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.

(2) Teacher misassignments pursuant to Section 44258.9.

(3) The accuracy of information reported on the School Accountability Report Card required by Section 33126. The requirements set forth in paragraphs (1) and (2) and this paragraph shall be added to the audit guide requirements pursuant to subdivision (b) of Section 14502.1.

SEC. 3. Section 17002 of the Education Code is amended to read:

17002. The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

(b) "Board" means the State Allocation Board.

(c) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(d)(1) "Good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards to which the facility was designed and constructed.

(2) By January 25, 2005, the Office of Public School Construction shall develop the interim evaluation instrument based on existing prototypes and shall consult with county superintendents of schools and school districts during the development of the instrument. The Office of Public School Construction shall report and make recommendations to the Legislature and Governor not later than December 31, 2005, regarding options for state standards as an alternative to the interim evaluation instrument developed pursuant to paragraph (1). By September 1, 2006, the Legislature and Governor shall, by statute, determine the state standard that shall apply for subsequent fiscal years.

* * * (e) "Lease" includes a lease with an option to purchase.

(f) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

SEC. 4. Section 17014 of the Education Code is amended to read:

17014. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the * * * general fund of the school district for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the * * * general fund budget of the applicant district for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

(c) For each project funded after July 1, 1998, the board shall require the applicant school district governing board to certify, as part of the * * * annual budget process of the school district and beginning in the fiscal year in which the project is funded by the state, that a plan has been prepared for completing major maintenance, repair, and replacement requirements for the project. For purposes of this subdivision, the term "major maintenance, repair, and replacement" means roofing, siding, painting, floor and window coverings, fixtures, cabinets, heating and cooling systems, landscaping, fences, and other items designated by the governing board of the school district. The board shall require the school district's governing board to certify that the plan includes and is being implemented as follows:

(1) Identification of the major maintenance, repair, and replacement needs for the project.

(2) Specification of a schedule for completing the major maintenance, repair, and replacement needs.

(3) Specification of a current cost estimate for the scheduled major maintenance, repair, and replacement needs.

(4) Specification of the school district's schedule for funding a reserve to pay for the scheduled major maintenance, repair, and replacement needs.

(5) Review of the plan annually, as a part of the * * * annual budget process of the school district, and update, as needed, the major maintenance, repair, and replacement needs, the estimates of expected costs, and any adjustments in funding the reserve.

(6) Availability for public inspection of the original plan, and all updated versions of the plan, at the office of the superintendent of the school district during the working hours of the school district.

(7) Provision in the * * * annual budget of the school district of a provision that states the total funding available in reserve for scheduled major maintenance, repair and replacement needs as specified in the updated plan, and an explanation if this amount is less than that specified in the updated plan. The reserve shall be maintained in the restricted account established pursuant to subdivision (b).

(d) For purposes of this section, "good repair" has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 5. Section 17032.5 of the Education Code is amended to read:

17032.5. (a) The board shall establish the annual rent and conditions to be met by the lessee of a portable classroom leased pursuant to Section 17717.2 and shall require lessees to undertake all necessary maintenance, repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

(b) For purposes of this section, "good repair" has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 6. Section 17070.15 of the Education Code is amended to read:

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Apportionment" means a reservation of funds for the purpose of eligible new construction, modernization, or hardship approved by the board for an applicant school district.

(b) "Attendance area" means the geographical area serving an existing high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

(e) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(f) "Department" means the Department of General Services.

(g) "Fund" means the applicable 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, * * * established pursuant to Section 17070.40.

(h) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(i) "Modernization" means any modification of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.

(j) "Portable classroom" means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(k) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(l) "School building capacity" means the capacity of a school building to house pupils.

(m) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

SEC. 7. Section 17070.75 of the Education Code is amended to read:

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times maintained in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the * * * general fund of the school district for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2)(A) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the * * * total general fund expenditures of the applicant school district, including other financing uses, for that fiscal year. * * * Annual deposits to the account established pursuant to paragraph (1) in excess of 2½ percent of the school district general fund budget may count towards the * * * amount of funds required to be contributed by a school district in order to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that those funds are used for purposes that qualify for funding under that section.

* * * (B) Notwithstanding subparagraph (A), for the 2004–05 fiscal year only, an applicant school district shall deposit into the account established pursuant to paragraph (1), no less than 2 percent of the total general fund expenditures of the school district, including other financing uses, for the fiscal year. The annual deposit to the account in excess of 1½ percent of the school district general fund budget for the 2004–05 fiscal year may count towards the amount that a school district is required to contribute in order to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that those funds are used for purposes that qualify for funding under that section.

(C) A school district contribution to * * * the account may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. A school district that serves as the administrative unit for a special education local plan area may elect to exclude from its total general fund expenditures, for purposes of this paragraph, the distribution of revenues that are passed through to participating members of the special education local plan area.

(D) This paragraph * * * applies only to the following school districts:

(i) High school districts with an average daily attendance greater than 300 pupils.

(ii) Elementary school districts with an average daily attendance greater than 900 pupils.

(iii) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the school district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year may not be counted toward the annual minimum contribution by the school district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A school district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For * * * purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be * * * based upon the county office of education general fund less any restricted accounts.

(e) As a condition of participation in the school facilities program or the receipt of funds pursuant to Section 17582, for a fiscal year after the 2004–05 fiscal year, a school district shall establish a facilities inspection system to ensure that each of its schools is maintained in good repair.

(f) For purposes of this section, "good repair" has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 8. Section 17087 of the Education Code is amended to read:

17087. As used in this chapter:

(a) "Board" means the State Allocation Board.

(b) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(c) "Lessee" means a school district or county superintendent of schools to whom the board has leased a portable classroom pursuant to this chapter.

(d) "State School Building Aid Fund" means that fund established pursuant to Section 16096.

SEC. 9. Section 17089 of the Education Code is amended to read:

17089. (a) The board shall lease portable classrooms to qualifying school districts and county superintendents of schools for not less than one dollar ($1) per year, nor more than four thousand dollars ($4,000) per year, for each portable classroom * * *. This amount shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for classroom construction, as determined by the board at its January meeting.

(b) The board shall require each lessee to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

(c) For purposes of this section, "good repair" has the same meaning as specified in subdivision (d) of Section 17002.

SEC. 10. Section 33126 of the Education Code is amended to read:

33126. (a) The school accountability report card shall provide data by which * * * a parent can make meaningful comparisons between public schools * * * that will enable him or her to make informed decisions on which school to enroll * * * his or her children.

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1)(A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

(C) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Education Data System or any successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the State Board of Education, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System or any successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, * * * any assignment of teachers outside their subject areas of competence, misassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

(A) For purposes of this paragraph, "vacant teacher position" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position of which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

(B) For purposes of this paragraph, "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(6)(A) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and * * * are adopted by the State Board of Education for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(B) The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics, science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(17) The number of advanced placement courses offered, by subject.

(18) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received a grant pursuant to, that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

(22) Contact information pertaining to any organized opportunities for parental involvement.

(23) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University pursuant to Section 51225.3 and the percentage of pupils enrolled in those courses, as reported by the California Basic Education Data System or any successor data system.

(24) Whether the school has a college admissions test preparation course program.

(25) When available from the * * * department, the claiming rate of pupils who earned a Governor's Scholarship Award pursuant to subdivision (a) of Section 69997 for the most recent two-year period. This paragraph applies only to schools that enroll pupils in grade 9, 10 or 11.

(c) If the Commission on State Mandates finds a school district is eligible for a reimbursement of costs incurred complying with this section, the school district shall be reimbursed only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Section 41020. If the information is determined to be inaccurate, the school district is not ineligible for reimbursement if the information is corrected by May 15.

(d) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

SEC. 11. Section 33126.1 of the Education Code is amended to read:

33126.1. (a) The * * * department shall develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.

(b) The standardized template shall include fields for the insertion of data and information by the * * * department and by local educational agencies, including a field to report the determination of the sufficiency of textbooks and instructional materials, as defined in Section 60119, and a summary statement of the condition of school facilities, as defined in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089. The department shall provide examples of summary statements of the condition of school facilities that are acceptable and those that are unacceptable. When the template for a school is completed, it should enable parents and guardians to compare * * * the manner in which local schools compare to other schools within that district as well as other schools in the state.

(c) In conjunction with the development of the standardized template, the * * * department shall furnish standard definitions for school conditions included in the school accountability report card. The standard definitions shall comply with the following:

(1) Definitions shall be consistent with the definitions already in place or under the development at the state level pursuant to existing law.

(2) Definitions shall enable schools to furnish contextual or comparative information to assist the public in understanding the information in relation to the performance of other schools.

(3) Definitions shall specify the data for which the * * * department will be responsible for providing and the data and information for which the local educational agencies will be responsible.

(d) By December 1, 2000, the * * * department shall report to the State Board of Education on the school conditions for which it already has standard definitions in place or under development. The report shall include a survey of the conditions for which the * * * department has valid and reliable data at the state, district, or school level. The report shall provide a timetable for the inclusion of conditions for which standard definitions or valid and reliable data do not yet exist through the * * * department.

(e) By December 1, 2000, the Superintendent of Public Instruction shall recommend and the State Board of Education shall appoint 13 members to serve on a broad-based advisory committee of local administrators, educators, parents, and other knowledgeable parties to develop definitions for the school conditions for which standard definitions do not yet exist. The State Board of Education may designate outside experts in performance measurements in support of activities of the advisory board.

(f) By January 1, 2001, the State Board of Education shall approve available definitions for inclusion in the template as well as a timetable for the further development of definitions and data collection procedures. By July 1, 2001, and each year thereafter, the State Board of Education shall adopt the template for the current year's school accountability report card. Definitions for all school conditions shall be included in the template by July 1, 2002.

(g) The * * * department shall annually post the completed and viewable template on the Internet. The template shall be designed to allow schools or districts to download the template from the Internet. The template shall further be designed to allow local educational agencies, including individual schools, to enter data into the school accountability report card electronically, individualize the report card, and further describe the data elements. The * * * department shall establish model guidelines and safeguards that may be used by school districts secured access only for those school officials authorized to make modifications.

(h) The * * * department shall annually post, on the Internet, each eligible school's claiming rate of pupils who earned an award for either of the programs established by subdivision (a) of Section 69997. The Scholarshare Investment Board shall provide the claiming rates, for the most recent two-year period, for each eligible school to the * * * department by June 30 of each year. Schools shall post their claiming rate, required in paragraph (25) of subdivision (b) of Section 33216, from the * * * Internet site of the department.

(i) The * * * department shall maintain current Internet links with the Web sites of local educational agencies to provide parents and the public with easy access to the school accountability report cards maintained on the Internet. In order to ensure the currency of these Internet links, local educational agencies that provide access to school accountability

report cards through the Internet shall furnish current Uniform Resource Locators for their Web sites to the * * * department.

(j) A school or school district that chooses not to utilize the standardized template adopted pursuant to this section shall report the data for its school accountability report card in a manner that is consistent with the definitions adopted pursuant to subdivision (c) * * *.

(k) The * * * department shall provide recommendations for changes to the California Basic Education Data System, or any successor data system, and other data collection mechanisms to ensure that the information will be preserved and available in the future.

(l) Local educational agencies shall make these school accountability report cards available through the Internet or through paper copies.

(m) The * * * department shall monitor the compliance of local educational agencies with the requirements to prepare and to distribute school accountability report cards.

SEC. 12. Section 35186 is added to the Education Code, to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, the condition of a facility that is not maintained in a clean or safe manner or in good repair, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state adopted or district adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school in order to complete required homework assignments.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a certificated teacher is not assigned to teach the class.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents and guardians of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(h) For purposes of this section, the following definitions apply:

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a vacant teacher position as defined in subparagraph (A) of paragraph (5) of subdivision (b) of Section 33126.

SEC. 13. Section 41020 of the Education Code is amended to read:

41020. (a) It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

(b)(1) Not later than the first day of May of each fiscal year, each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each local educational agency shall either provide for an audit of the books and accounts of the local educational agency, including an audit of income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing.

(2) A contract to perform the audit of a local educational agency that has a disapproved budget or has received a negative certification on any budget or interim financial report during the current fiscal year or either of the two preceding fiscal years, or for which the county superintendent of schools has otherwise determined that a lack of going concern exists, is not valid unless approved by the responsible county superintendent of schools and the governing board.

(3) If the governing board of a local educational agency has not provided for an audit of the books and accounts of the local educational agency by April 1, the county superintendent of schools having jurisdiction over the local educational agency shall provide for the audit of each local educational agency.

(4) An audit conducted pursuant to this section shall fully comply with the Government Auditing Standards issued by the Comptroller General of the United States.

(5) For purposes of this section, "local educational agency" does not include community colleges.

(c) Each audit conducted in accordance with this section shall include all funds of the local educational agency, including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the local educational agency. Each audit shall also include an audit of pupil attendance procedures.

(d) All audit reports for * * * each * * * fiscal year * * * shall be developed and reported using a format established by the Controller after consultation with the Superintendent of Public Instruction and the Director of Finance.

(e)(1) The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

(2) The cost of the audit provided for by a governing board shall be paid from local educational agency funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

(f)(1) The audits shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy, and selected by the local educational agency, as applicable, from a directory of certified public accountants and public accountants deemed by the Controller as qualified to conduct audits of local educational agencies, which shall be published by the Controller not later than December 31 of each year.

(2) Commencing with the 2003–04 fiscal year and except as provided in subdivision (d) of Section 41320.1, it is unlawful for a public accounting firm to provide audit services to a local educational agency if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local educational agency in each of the six previous fiscal years. The Education Audits Appeal Panel may waive this requirement if the panel finds that no otherwise eligible auditor is available to perform the audit.

(3) It is the intent of the Legislature that, notwithstanding paragraph (2) of this subdivision, the rotation within public accounting firms conform to provisions of the federal Sarbanes–Oxley Act of 2002 (P.L. 107–204; 15 U.S.C. Sec. 7201 * * * et seq.), and upon release of the report required by the act of the Comptroller General of the United States addressing the mandatory rotation of registered public accounting firms, the Legislature intends to reconsider the provisions of paragraph (2). In determining which certified public accountants and public accountants shall be included in the directory, the Controller shall use the following criteria:

(A) The certified public accountants or public accountants shall be in good standing as certified by the Board of Accountancy.

(B) The certified public accountants or public accountants, as a result of a quality control review conducted by the Controller pursuant to Section 14504.2, shall not have been found to have conducted an audit in a manner constituting noncompliance with subdivision (a) of Section 14503.

(g)(1) The auditor's report shall include each of the following:

(A) A statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1.

(B) A summary of audit exceptions and management improvement recommendations.

(C) Each local education agency's audit shall include an auditor's evaluation on whether there is substantial doubt about the local agency's ability to continue as a going concern for a

reasonable period of time. This evaluation shall be based on the Statement of Auditing Standards (SAS) No. 59, as issued by the AICPA regarding disclosure requirements relating the entity's ability to continue as a going concern.

(2) To the extent possible, a description of correction or plan of correction shall be incorporated in the audit report, describing the specific actions that are planned to be taken, or that have been taken, to correct the problem identified by the auditor. The descriptions of specific actions to be taken or that have been taken shall not solely consist of general comments such as "will implement," "accepted the recommendation," or "will discuss at a later date."

(h) Not later than December 15, a report of each local educational agency audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the local educational agency is located, the State Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by those audit reports.

(i)(1) Commencing with the 2002–03 audit of local educational agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have been either corrected or an acceptable plan of correction has been developed.

(2) Commencing with the 2004–05 audit of local educational agencies pursuant to this section, each county superintendent of schools shall include in the review of audit exceptions performed pursuant to this subdivision those audit exceptions related to use of instructional materials program funds, teacher misassignments pursuant to Section 44258.9, information reported on the school accountability report card required pursuant to Section 33126 and shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed.

(j) Upon submission of the final audit report to the governing board of each local educational agency and subsequent receipt of the audit by the county superintendent of schools having jurisdiction over the local educational agency, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited to, those related to revenue limits, adult education, and independent study.

(2) If a description of the correction or plan of correction has not been provided as part of the audit required by this section, then the county superintendent of schools shall notify the local educational agency and request the governing board of the local educational agency to provide to the county superintendent of schools a description of the corrections or plan of correction by March 15.

(3) Review the description of correction or plan of correction and determine its adequacy. If the description of the correction or plan of correction is not adequate, the county superintendent of schools shall require the local educational agency to resubmit that portion of its response that is inadequate.

(k) Each county superintendent of schools shall certify to the Superintendent of Public Instruction and the Controller, not later than May 15, that his or her staff has reviewed all audits of local educational agencies under his or her jurisdiction for the prior fiscal year, that all exceptions that the county superintendent was required to review were reviewed, and that all of those exceptions, except as otherwise noted in the certification, have been corrected by the local educational agency or that an acceptable plan of correction has been submitted to the county superintendent of schools. In addition, the county superintendent shall identify, by local educational agency, any attendance-related audit exception or exceptions involving state funds, and require the local educational agency to which the audit exceptions were directed to submit appropriate reporting forms for processing by the Superintendent of Public Instruction.

(l) In the audit of a local educational agency for a subsequent year, the auditor shall review the correction or plan or plans of correction submitted by the local educational agency to determine if the exceptions have been resolved. If not, the auditor shall immediately notify the appropriate county office of education and the State Department of Education and restate the exception in the audit report. After receiving that notification, the State Department of Education shall either consult with the local educational agency to resolve the exception or require the county superintendent of schools to follow up with the local educational agency.

(m)(1) The Superintendent of Public Instruction shall be responsible for ensuring that local educational agencies have either corrected or developed plans of correction for any one or more of the following:

(A) All federal and state compliance audit exceptions identified in the audit.

(B) Any exceptions that the county superintendent certifies as of May 15 have not been corrected.

(C) Any repeat audit exceptions that are not assigned to a county superintendent to correct.

(2) In addition, the Superintendent of Public Instruction shall be responsible for ensuring that county superintendents of schools and each county board of education that serves as the governing board of a local educational agency either correct all audit exceptions identified in the audits of county superintendents of schools and of the local educational agencies for which the county boards of education serve as the governing boards or develop acceptable plans of correction for those exceptions.

(3) The Superintendent of Public Instruction shall report annually to the Controller on his or her actions to ensure that school districts, county superintendents of schools, and each county board of education that serves as the governing board of a school district have either corrected or developed plans of correction for any of the exceptions noted pursuant to paragraph (1).

(n) To facilitate correction of the exceptions identified by the audits issued pursuant to this section, commencing with 2002–03 audits pursuant to this section, the Controller shall require auditors to categorize audit exceptions in each audit report in a manner that will make it clear to both the county superintendent of schools and the Superintendent of Public Instruction which exceptions they are responsible for ensuring the correction of by a local educational agency. In addition, the Controller annually shall select a sampling of county superintendents of schools and perform a followup of the audit resolution process of those county superintendents of schools and report the results of that followup to the Superintendent of Public Instruction and the county superintendents of schools that were reviewed.

(o) County superintendents of schools shall adjust subsequent local property tax requirements to correct audit exceptions relating to local educational agency tax rates and tax revenues.

(p) If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for the audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from local educational agency funds or the county school service fund, as the case may be.

(q) Audits of regional occupational centers and programs are subject to the provisions of this section.

(r) * * * This section * * * does not authorize examination of, or reports on, the curriculum used or provided for in any local educational agency.

(s) Notwithstanding any other provision of law, a nonauditing, management, or other consulting service to be provided to a local educational agency by a certified public accounting firm while the certified public accounting firm is performing an audit of the ageney pursuant to this section must be in accord with Government Accounting Standards, Amendment No. 3, as published by the United States General Accounting Office.

SEC. 14. Section 41344.4 is added to the Education Code, to read:

41344.4. Notwithstanding any other provision of law, a local educational agency is not required to repay an apportionment based on a significant audit exception related to the

requirements specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 14501 if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception was corrected by the local educational agency or that an acceptable plan of correction was submitted to the county superintendent of schools pursuant to subdivision (k) of Section 41020. With respect to textbooks and instructional materials, the plan shall be consistent with the requirements of subparagraph (A) of paragraph (2) of subdivision (a) of Section 60119.

SEC. 15. Section 52055.625 of the Education Code is amended to read:

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not be required to adopt all of the listed options as a condition of funding under the terms of this section. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to address the needs of high-priority pupils.

(b)(1) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(A) Pupil literacy and achievement.

(B) Quality of staff.

(C) Parental involvement.

(D) Facilities, curriculum, instructional materials, and support services.

(2) As a condition of the receipt of funds, a school action plan for a school initially applying to participate in the program on or after the 2004–05 fiscal year, shall include each of the following essential components:

(A) Pupil literacy and achievement.

(B) Quality of staff, including highly qualified teachers, as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and appropriately credentialed teachers for English learners.

(C) Parental involvement.

(D) Facilities maintained in good repair as specified in Sections 17014, 17032.5, 17070.75, and 17089, curriculum, instructional materials that are, at a minimum, consistent with the requirements of Section 60119, and support services.

(c)(1) The pupil literacy and achievement component shall contain a strategy to focus on increasing pupil literacy and achievement, with necessary attention to the needs of English language learners. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) Each pupil at the school will be provided appropriate instructional materials aligned with the academic content and performance standards adopted by the State Board of Education as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on API results by the end of the implementation period.

(C) English language learners at the school will demonstrate increased performance based on the English language development test required by Section 60810 and the achievement tests required pursuant to Section 60640.

(2) To achieve the goals in paragraph (1), a school in its action plan may include, among other things, any of the following options:

(A) Selective class size reduction in key curricular areas provided this does not result in a decrease in the proportion of experienced credentialed teachers at the schoolsite.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) Targeted intensive reading instruction utilizing reading capacity-level materials that may include, but are not limited to, the following strategies:

(i) The development of a reading competency program for pupils in grades 5 to 8, inclusive, whose reading scores are at or below the 40th percentile or in the two lowest performance

levels, as adopted by the State Board of Education, on the reading portion of the achievement test, authorized by Section 60640. This program may include direct instruction in reading at grade level utilizing the English language arts content standards adopted pursuant to Section 60605. Additionally, this program may offer specialized intervention that utilizes state approved instructional materials adopted pursuant to Section 60200. It is the intent of the Legislature, as a recommendation, that this curriculum consist of at least one class period during the regular schoolday taught by a teacher trained in the English language arts standards pursuant to Section 60605. It is also the intent of the Legislature, as a recommendation, that periodic assessments throughout the year be conducted to monitor the progress of the pupils involved.

(ii) The use of a library media teacher to work cooperatively with every teacher and principal at the schoolsite to develop and implement an independent and free reading program, help teachers determine a pupil's reading level, order books that have been determined to meet the needs of pupils, help choose books at pupils' independent reading levels, and assure that pupils read a variety of genres across all academic content areas. For purposes of this article, "library media teacher" means a classroom teacher who possesses or is in the process of obtaining a library media teacher services credential consistent with Section 44868.

(D) Mentoring programs for pupils.

(E) Community, business, or university partnerships with the school.

(d)(1) The quality of staff component shall contain a strategy to attract, retain, and fairly distribute the highest quality staff at the school, including teachers, administrators, and support staff. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) An increase in the number of credentialed teachers working at that schoolsite.

(B) An increase in or targeting of professional development opportunities for teachers related to the goals of the action plan and English language development standards adopted by the State Board of Education aligned with the academic content and performance standards, including, but not limited to, participation in professional development institutes established pursuant to Article 2 (commencing with Section 92220) of Chapter 5 of Part 65.

(C) By the end of the implementation period, successful completion by the schoolsite administrators of a program designed to maximize leadership skills.

(2) To achieve the goals in paragraph (1) a school may include in its action plan, among others, any of the following options:

(A) Incentives to attract credentialed teachers and quality administrators to the schoolsite, including, but not limited to, additional compensation strategies similar to those authorized pursuant to Section 44735.

(B) A school district preintern or intern program within which eligible emergency permit teachers located at the schoolsite would be required to participate, unless those individuals are already participating in another teacher preparation program that leads to the attainment of a valid California teaching credential.

(C) Common planning time for teachers, administrators, and support staff focused on improving pupil achievement.

(D) Mentoring for site administrators, peer assistance for credentialed teachers, and support services for new teachers, including, but not limited to, the Beginning Teacher Support and Assessment System.

(E) Providing assistance and incentives to teachers for completion of professional certification programs and toward attaining BCLAD or CLAD certification.

(F) Increasing professional development in state academic content and performance standards, including English language development standards.

(e)(1) The parental involvement component shall contain a strategy to change the culture of the school community to recognize parents and guardians as partners in the education of their children and to prepare and educate parents and guardians in the learning and academic progress of their children. At a minimum, this strategy shall include a commitment to develop a school-parent compact as required by Section 51101 and a plan to achieve the goal

of maintaining or increasing the number and frequency of personal parent and guardian contacts each year at the schoolsite and school-home communications designed to promote parent and guardian support for meeting state standards and core curriculum requirements.

(2) To achieve the goals in subdivision (a), a school may in its action plan include, among others, any of the following options:

(A) Parent and guardian homework support classes.

(B) A program of regular home visits.

(C) After school and evening opportunities for parents, guardians, and pupils to learn together.

(D) Training programs to educate parents and guardians about state standards and testing requirements, including the high school exit examination.

(E) Creation, maintenance, and support of parent centers located on schoolsites to educate parents and guardians regarding pupil expectations and provide support to parents and guardians in their efforts to help their children learn.

(F) Programs targeted at parents and guardians of special education pupils.

(G) Efforts to develop a culture at the schoolsite focused on college attendance, including programs to educate parents and guardians regarding college entrance requirements and options.

(H) Providing more bilingual personnel at the schoolsite and at school related functions to communicate more effectively with parents and guardians who speak a language other than English.

(I) Providing an opportunity for parents to monitor online, if the technology is available, and in compliance with applicable state and federal privacy laws, the academic progress and attendance of their children.

(f)(1) The facilities, curriculum, instructional materials, and support services component shall contain a strategy to provide an environment that is conducive to teaching and learning and that includes the development of a high-quality curriculum and instruction aligned with the academic content and performance standards adopted pursuant to Section 60605 and the standards for English language development adopted pursuant to Section 60811 to measure progress made towards achieving English language proficiency. At a minimum, this strategy shall include the goal of providing adequate logistical support including, but not limited to, curriculum, quality instruction, instructional materials, support services, and supplies for every pupil.

(2) To achieve the goal specified in paragraph (1), a school in its action plan may include, among others, any of the following options:

(A) State and locally developed valid and reliable assessments based on state academic content standards.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) The addition of more pupil support services staff, including, but not limited to, paraprofessionals, counselors, library media teachers, nurses, psychologists, social workers, speech therapists, audiologists, and speech pathologists.

(D) Pupil support centers for additional tutoring or homework assistance.

(E) Use of most current standards-aligned textbooks adopted by the State Board of Education, including materials for English language learners.

(F) For secondary schools, offering advanced placement courses and courses that meet the requirements for admission to the University of California or the California State University.

(g) A school action plan to improve pupil performance that is developed for participation in the program established pursuant to this article shall meet the requirements of subdivisions (d) and (e) of Section 52054 and this article.

SEC. 16. Section 52055.640 of the Education Code is amended to read:

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards

meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners. Schools initially applying to participate in the program on or after the 2004–05 fiscal year shall measure the availability of instructional materials against the definition of "sufficient instructional materials" set forth in subdivision (c) of Section 60119.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing and Reporting Program and the writing sample that is part of that program.

(2) The results of the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

SEC. 17. Section 52055.662 is added to the Education Code, to read:

52055.662. It is the intent of the Legislature to appropriate any savings achieved as a result of schools being phased out of the Immediate Intervention Underperforming School Program and the High Priority Schools Grant Program to provide High Priority Schools Grant awards to eligible schools, pursuant to Section 52055.605, that have not previously received a grant under this program.

SEC. 18. Section 60119 of the Education Code is amended to read:

60119. (a) * * * In order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1)(A) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has * * * sufficient textbooks or instructional materials, or both, in each * * * of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History–social science.

(iv) English/language arts, including the English language development component of an adopted program.

(B) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack, year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004–05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(C) As part of the hearing required pursuant to this section, the governing board shall also make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(2)(A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within * * * two months of the beginning of the school year in which the determination is made.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c)(1) For purposes of this section, "sufficient textbooks or instructional materials" means that each pupil, including English learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments. This paragraph does not require two sets of textbooks or instructional materials for each pupil.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

(d) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent of Public Instruction determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

* * *

SEC. 19. Section 60240 of the Education Code is amended to read:

60240. (a) The State Instructional Materials Fund is hereby continued in existence in the State Treasury. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this part. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials, including classroom library materials.

(b) The State Department of Education shall administer the fund under policies established by the state board.

(c)(1) The state board shall encumber part of the fund to pay for accessible instructional materials pursuant to Sections 60312 and 60313 to accommodate pupils who are visually impaired or have other disabilities and are unable to access the general curriculum.

(2) The state board may encumber funds, in an amount not to exceed two hundred thousand dollars ($200,000), for replacement of instructional materials, obtained by a school district with its allowance that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

(3) The state board may encumber funds for the costs of warehousing and transporting instructional materials it has acquired.

(d) The department may expend up to five million dollars ($5,000,000) from the fund to acquire instructional materials for school districts pursuant to subdivision (i) of Section 1240. The fund shall be replenished by amounts repaid by school districts or deducted from apportionments to school districts by the Controller pursuant to subdivision (i) of Section 1240.

SEC. 20. Section 60252 of the Education Code is amended to read:

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section

60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(3) A school district shall ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.

* * *

SEC. 21. Section 62000.4 of the Education Code is repealed.

SEC. 22. Section 36 of Chapter 216 of the Statutes of 2004 is amended to read:

Sec. 36. (a) The sum of nine hundred fifteen million four hundred forty-one thousand dollars ($915,441,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(1) The following amounts are appropriated for the 2005–06 fiscal year:

(A) The sum of five million nine hundred thirty-three thousand dollars ($5,933,000) to the State Department of Education for apprenticeship programs to be expended consistent with the requirements specified in Item 6110–103–0001 of Section 2.00 of the Budget Act of 2004.

(B) The sum of eighty-five million eight hundred sixty-six thousand dollars ($85,866,000) to the State Department of Education for supplemental instruction to be expended consistent with the requirements specified in Item 6110–104–0001 of Section 2.00 of the Budget Act of 2004. Of the amount appropriated by this subparagraph, forty-eight million six hundred fifty-two thousand dollars ($48,652,000) shall be expended consistent with Schedule (1) of Item 6110–104–0001 of Section 2.00 of the Budget Act of 2004, eleven million seven hundred forty-nine thousand dollars ($11,749,000) shall be expended consistent with Schedule (2) of that item, four million four hundred sixty-nine thousand dollars ($4,469,000) shall be expended consistent with Schedule (3) of that item, and twenty million nine hundred ninety-six thousand dollars ($20,996,000) shall be expended consistent with Schedule (4) of that item.

(C) The sum of thirty-seven million fifty-one thousand dollars ($37,051,000) to the State Department of Education for regional occupational centers and programs to be expended consistent with the requirements specified in Schedule (1) of Item 6110–105–0001 of Section 2.00 of the Budget Act of 2004.

(D) The sum of fifty million one hundred three thousand dollars ($50,103,000) to the State Department of Education for home-to-school transportation to be expended consistent with the requirements specified in Schedule (1) of Item 6110–111–0001 of Section 2.00 of the Budget Act of 2004.

(E) The sum of four million ninety-two thousand dollars ($4,092,000) to the State Department of Education for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110–124–0001 of Section 2.00 of the Budget Act of 2004.

(F) The sum of ninety-five million three hundred ninety-seven thousand dollars ($95,397,000) to the State Department of Education for Targeted Instructional Improvement Grant Program to be expended consistent with the requirements specified in Item 6110–132–0001 of Section 2.00 of the Budget Act of 2004.

(G) The sum of forty-two million nine hundred fifty-nine thousand dollars ($42,959,000) to the State Department of Education for adult education to be expended consistent with the requirements specified in Schedule (1) of Item 6110–156–0001 of Section 2.00 of the Budget Act of 2004.

(H) The sum of four million five hundred fifty-eight thousand dollars ($4,558,000) to the State Department of Education for community day schools to be expended consistent with the requirements specified in Item 6110–190–0001 of Section 2.00 of the Budget Act of 2004.

(I) The sum of five million two hundred ninety-eight thousand dollars ($5,298,000) to the State Department of Education for categorical block grants for charter schools to be expended consistent with the requirements specified in Item 6110–211–0001 of Section 2.00 of the Budget Act of 2004.

(J) The sum of thirty-six million eight hundred ninety-four thousand dollars ($36,894,000) to the State Department of Education for the School Safety Block Grant to be expended consistent with the requirements specified in Schedule (1) of Item 6110–228–0001 of Section 2.00 of the Budget Act of 2004.

(K) The sum of two hundred million dollars ($200,000,000) to the Board of Governors of the California Community Colleges for apportionments, to be expended in accordance with the requirements specified for Schedule (1) of Item 6870–101–0001 of Section 2.00 of the Budget Act of 2004.

(2) The sum of one hundred nine million nine hundred fourteen thousand dollars ($109,914,000) is appropriated for the 2004–05 fiscal year to the Superintendent of Public Instruction for the purposes of Section 42238.44 of the Education Code, to be allocated to school districts on a pro rata basis.

(3) The following amounts are appropriated for the 2003–04 fiscal year:

(A) The sum of twelve million six hundred four thousand dollars ($12,604,000) to the State Department of Education for transfer to the State School Deferred Maintenance Fund to be available for funding applications received by the Department of General Services, Office of Public School Construction from school districts for deferred maintenance projects pursuant to Section 17584 of the Education Code.

(B) The sum of one hundred thirty-eight million dollars ($138,000,000) to the State Department of Education for transfer to the Instructional Materials Fund. The funds appropriated pursuant to this subparagraph shall be apportioned to school districts on the basis of an equal amount per pupil enrolled in schools in decile 1 or 2 of the Academic Performance Index (API), as ranked based on the 2003 base API score pursuant to Section 52056 of the Education Code. The funds apportioned pursuant to this subparagraph shall be used to purchase standards-aligned instructional materials pursuant to Section 60605 of the Education Code.

(C) The sum of fifty-eight million three hundred ninety-six thousand dollars ($58,396,000) to the Controller to pay for prior year state obligations for education mandate claims and interest. The Controller shall use the funds to pay for the oldest claims of those no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. No payments shall be made from these funds on any claims for the Standardized Testing and Reporting (STAR) Program, schoolsite councils, Brown Act reform, School Bus Safety II, or the removal of chemicals.

(D) The sum of twenty-eight million three hundred seventy-six thousand dollars ($28,376,000) to the Board of Governors of the California Community Colleges to provide one-time funding to districts for scheduled maintenance, special repairs, instructional materials, and library materials replacement. These funds shall be expended for the purposes of and be subject to the conditions of expenditures pursuant to Schedule (24.5) of Item 6870–101–0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subparagraphs (A) to (J), inclusive, of paragraph (1) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to

Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2005–06 fiscal year.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (K) of paragraph (1) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2005–06 fiscal year.

(d) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (2) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 2004–05 fiscal year and be included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2004–05 fiscal year.

(e) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by paragraph (3) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

(f) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (F) of paragraph (3) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

SEC. 23. (a) The sum of twenty million two hundred thousand dollars ($20,200,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(1) The sum of five million dollars ($5,000,000) to the State Department of Education for transfer to the State Instructional Materials Fund for purposes of acquiring instructional materials for school districts pursuant to subdivision (i) of Section 1240 of the Education Code.

(2) The sum of fifteen million dollars ($15,000,000) to the State Department of Education for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts pursuant to subparagraph (G) of paragraph (1) of subdivision (a) of Section 42127.6 of the Education Code, subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 44258.9 of the Education Code, and paragraph (4) of subdivision (e) of Section 44258.9 of the Education Code, and to conduct and report on site visits pursuant to paragraph (2) of subdivision (c) of Section 1240 of the Education Code, and oversee schools' compliance with instructional materials sufficiency requirements as provided in paragraphs (2) to (4), inclusive, of subdivision (i) of Section 1240 of the Education Code. Funds appropriated in this paragraph shall be allocated annually to county offices of education at the rate of three thousand dollars ($3,000) for each school in the county ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056 of the Education Code, based on the 2003 base Academic Performance Index score for each school, provided that the annual allocation for each county shall be a minimum of twenty thousand dollars ($20,000). If there are insufficient funds in any year to make the allocations required by this paragraph, the department shall allocate funding in proportion to the number of sites in each county. County offices shall contract with another county office or independent auditor for any work funded by this paragraph that is associated with a school operated by that county office.

(3) The sum of two hundred thousand dollars ($200,000) to the State Department of Education to implement this act.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (2) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2004–05 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2004–05 fiscal year. Funds appropriated by this section shall be available for transfer or encumbrance for three fiscal years, beginning in 2004–05.

SEC. 24. The State Department of Education shall develop an instrument to assist county superintendents of schools evaluate the sufficiency of textbooks pursuant to Section 1240 of the Education Code. It is the intent of the Legislature that county superintendents conduct the evaluation during the same visit that they inspect sites pursuant to Section 1240 of the Education Code.

SEC. 25. (a) It is the intent of the Legislature to memorialize and to implement the State of California's settlement agreement in the case of Williams v. California (Super. Ct. San Francisco, No. CGC–00–312236) and that the provisions of law added or modified by this act be substantially preserved as a matter of state policy in settlement of this case. The state is not, however, precluded from taking additional measures in furtherance of the settlement agreement and to improve the quality of education for pupils, in ways consistent with the provisions of the settlement agreement.

(b) Further, it is the intent of the Governor and the Legislature in enacting this act to establish these minimum thresholds for teacher quality, instructional materials, and school facilities. The Legislature finds and the Governor agrees that these minimum thresholds are essential in order to ensure that all of California's public school pupils have access to the basic elements of a quality public education. However, these minimum thresholds in no way reflect the full extent of the Legislature's and the Governor's expectations of what California's public schools are capable of achieving. Instead, these thresholds for teacher quality, instructional materials, and school facilities are intended by the Legislature and by the Governor to be a floor, rather than a ceiling, and a beginning, not an end, to the State of California's commitment and effort to ensure that all California school pupils have access to the basic elements of a quality public education.

(c) It is the intent of the Legislature and of the Governor that teachers, school administrators, trustees and staff, parents, and pupils all recommit themselves to the pursuit of academic excellence in California public schools.

(d) It is the intent of the Legislature that local educational agencies, county offices of education, and state agencies with responsibility for implementing this act begin implementation as soon as practicable and with due diligence. Local educational agencies and county offices of education should use their best judgment as to the interpretation of provisions, recognizing that further implementation direction from the state in the form of statutes, regulations, and technical guidance may be provided in the future and may supersede local interpretations. The state recognizes that due to the date of enactment of this act and the time it will take to allocate the funding to local educational agencies and county offices of education, that full implementation of some of the provisions for school terms beginning in 2004–05 is impracticable.

SEC. 26. The Legislature finds and declares that Sections 10 and 11 of this act further the purposes of the Classroom Instructional Improvement and Accountability Act.

SEC. 27. 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.

SEC. 28. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that all pupils in the public schools are provided standards-aligned instructional materials and are housed in adequately maintained school facilities, to ensure that school accountability report cards include important information, and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) as soon possible, it is necessary for this act to take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—SCHEDULES—CONCEPT 6 PROGRAM

CHAPTER 901

A.B. No. 1550

AN ACT to amend Section 37670 of, to add an article heading immediately preceding Section 37670 of, and to add Article 2 (commencing with Section 37680) to Chapter 5.5 of Part 22 of, the Education Code, relating to year-round schools, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1550, Daucher. Concept 6 program.

Existing law authorizes a school district to operate a program of multitrack year-round scheduling at one or more schools within the district. Under existing law, a program of multitrack year-round scheduling may operate for as few as 163 days in each fiscal year if the governing board of the school district adopts a resolution containing specified certifications at a regularly scheduled board meeting.

This bill would, commencing with the 2004–05 school year, prohibit a school district from operating a Concept 6 program unless the school district operated a Concept 6 program continuously since the 2003–04 school year. The bill would define a Concept 6 program to mean a program whereby a school operates on a 3–track year-round calendar in which each track provides fewer than 180 days, but no fewer than 163 days, of instruction per school year. The bill would require a district, as a condition of operating a Concept 6 program, by January 1, 2005, to present to the State Department of Education a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 program as soon as practicable and no later than July 1, 2012.

The bill would require a district that plans to operate a Concept 6 program after June 30, 2006, and after July 30, 2009, to submit specified reports to the Superintendent of Public Instruction that establish substantial progress has been made toward meeting its annual goals stated in the comprehensive action plan and that it has developed a specific school building plan to provide adequate pupil capacity to eliminate the Concept 6 program. The bill would authorize the State Board of Education to appoint a monitor to oversee the district if it finds that substantial progress has not been made or a specific school building plan has not been developed and the reason for the failure is not due to circumstances beyond the control of the district. The bill would prohibit the operation of a Concept 6 program after July 1, 2012.

Existing law requires the State Department of Education, in consultation with the Office of Public School Construction, by July 1, 2008, to conduct a survey to determine whether school districts operating a program of multitrack year-round scheduling for as few as 163 days in a fiscal year will phase out this scheduling by the 2009–10 fiscal year, and to submit the survey to specified education committees of the Legislature and to the Department of Finance. Existing law requires the Legislature to determine, based on this survey, whether to repeal

or continue the authority of a school district to operate a multitrack year-round schedule for as few as 163 days.

This bill, instead, would require the department, in consultation with the Office of Public School Construction, by July 1, 2008, to conduct a survey to determine whether school districts operating a Concept 6 program will phase out this program by the 2009–10 fiscal year, and to submit the survey to specified education committees of the Legislature and to the Department of Finance. The bill would require the Legislature to determine, based on the survey, whether to repeal the authority of a school district to operate a Concept 6 program prior to July 1, 2012.

The bill would declare that it would take effect immediately as an urgency statute.

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

SECTION 1. An article heading is added immediately preceding Section 37670 of the Education Code, to read:

Article 1. Multitrack Year-round Scheduling

SEC. 2. Section 37670 of the Education Code is amended to read:

37670. (a) * * * Except as provided in Article 2 (commencing with Section 37680), a school district may operate a program of multitrack year-round scheduling at one or more schools within the district. A program of multitrack year-round scheduling may operate at a schoolsite for as few as 163 days in each fiscal year if the governing board of the school district adopts a resolution at a regularly scheduled board meeting certifying that both of the following criteria are met at the schoolsite:

(1) The number of annual instructional minutes is not less than that of schools of the same grade levels utilizing the traditional school calendar.

(2) It is not possible for the school to maintain a multitrack schedule containing the same number of instructional days as are provided in schools of the district utilizing the traditional school calendar given the facilities, program, class sizes, and projected number of pupils enrolled at the schoolsite.

(b) A certificated * * * employee working under a program described in this section, except * * * one serving under an administrative or supervisorial credential * * * who is assigned full time to a school in * * * a position requiring qualifications for certification, shall work the same number of days and shall increase the number of minutes worked daily on a uniform basis.

(c) A program conducted pursuant to this section * * * is eligible for apportionment from the State School Fund.

* * *

SEC. 3. Article 2 (commencing with Section 37680) is added to Chapter 5.5 of Part 22 of the Education Code, to read:

Article 2. Concept 6 Class Scheduling

37680. For purposes of this article, the following terms have the following meanings:

(a) "Capacity–related busing" means transporting a pupil to a school other than the school of residence in order to reduce the number of pupils attending the school of residence.

(b) "Circumstances beyond the control of the district" means any of the following:

(1) An increase in pupil population beyond the demographic projections set forth in the district's comprehensive action plan, or an amendment thereto, if the increase was not reasonably foreseeable through the use of annual, informed reestimates of demographic projections.

(2) A cost escalation, shortage in construction material or capacity, delay in completion of an environmental review, or natural or human-made disaster materially affecting the district's

6 program is enrolled shall be disregarded, at the option of a school district, in calculating the number of days taught in the calculation of average daily attendance of that district for any school year, if the pupil entered the Concept 6 program after September 1 of that school year and the track in which the pupil is enrolled began instruction in July or August of that school year. For purposes of this subdivision, "late entry makeup class" is a class in which a pupil in a Concept 6 program is enrolled in order to compensate for the pupil's late enrollment in that program. The number of days taught that are disregarded under this subdivision shall not exceed the number of schooldays occurring in the school year prior to September 1 in the track in which the pupil is enrolled, reduced by the number of schooldays, if any, occurring in a program operating under the traditional school calendar in which the pupil was enrolled in that school district in the same school year prior to the date upon which the pupil is first enrolled in the Concept 6 program.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to reduce overcrowding in public schools and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, 2004, No. CGC–00–312236) as soon as possible, it is necessary for this act to take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—TEACHERS—GENERAL AMENDMENTS

CHAPTER 902

A.B. No. 3001

AN ACT to amend Sections 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 52055.640, and 52059 of the Education Code, relating to teachers, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3001, Goldberg. Teachers.

(1) Existing law requires the county superintendent of schools to report to the Superintendent of Public Instruction on the financial condition of a school district if the county superintendent determines a school district may be unable to meet its financial obligations for the current or 2 subsequent fiscal years or if a school district has a qualified or negative certification. Existing law requires the county superintendent to take at least one of certain actions and all actions that are necessary to ensure that the district meets its financial obligations.

This bill would require those possible actions to include assigning the Fiscal Crisis and Management Assistance Team to review district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment and also to provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. The bill would require a school district that is assigned this review to follow the recommendations made unless it shows good cause for failure to do so.

(2) Existing law requires the Commission on Teacher Credentialing to report, by April 15 of each year, to the Legislature and the Governor on the number of classroom teachers who received credentials, internships, and emergency permits in the previous fiscal year. The report is required to include specified information.

This bill would expand, as specified, the kind of information to be included in that report.

(3) Existing law requires the county superintendent of schools to annually monitor and review school district certificated employee assignment practices according to certain priorities with first priority going to schools and school districts that are likely to have problems with teacher misassignment and teacher vacancies based on past experience or other available information. Existing law requires a county superintendent of schools to submit an annual report to the Commission on Teacher Credentialing summarizing the results of all assignment monitoring and reviews.

This bill would require the county superintendent of schools to give priority to schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, as defined, if those schools are not currently under review through a state or federal intervention program. The bill would require a county superintendent of schools to investigate school and district efforts to ensure that any credentialed teacher in an assignment requiring a certificate authorizing the holder to teach English language development to English learners or training that authorizes the holder to teach English language development to English learners completes the necessary requirements for one of those certificates or completes the required training.

The bill would require a county superintendent of schools to submit the annual report summarizing the results of assignment monitoring and reviews to the department. The bill would require that report to include information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, as defined, to ensure that in any classes in these schools in which 20% or more pupils are English learners, the assigned teachers possess a certificate authorizing the holder to teach English language development to English learners or have completed training that would authorize them to teach English language development to English learners or are otherwise authorized by law to do so. By adding these new requirements to the duties of county superintendents of schools, the bill would impose a state-mandated local program.

The bill would require the Superintendent of Public Instruction to submit a summary of the reports submitted by county superintendents of schools to the Legislature and would require the Legislature to hold public hearings on pupil access to teachers and to related statutory provisions.

(4) Existing law requires the Commission on Teacher Credentialing to grant an appropriate credential to an applicant from another state who completes teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California if the applicant has met the requirements of California for the basic skills proficiency test and teacher fitness.

This bill would delete the basic skills proficiency test requirement for these teacher credentialing applicants if the commission determines, as specified, that the applicant has met a comparable requirement.

(5) Existing law requires an out-of-state prepared teacher who is issued a California 5–year preliminary multiple subject, single subject, or education specialist teaching credential to pass the state basic skills proficiency test, administered by the Commission on Teacher Credentialing, within one year of the issuance date of the credential in order to be eligible to continue teaching.

This bill would delete this requirement, unless the commission determines, as specified, that the applicant has met a comparable requirement.

(6) Existing law requires the commission to issue a professional clear credential to an out-of-state prepared teacher who meets certain requirements among which are passing the state basic skills proficiency test administered by the commission and completing the study of health education and of a fifth-year program at a regionally accredited institution of higher education.

This bill would delete the requirements regarding the state basic skills proficiency test and a fifth-year program, unless the commission determines, as specified, that the applicant has met comparable requirements. The bill would delete the health education requirement.

The bill would require the Commission on Teacher Credentialing, by June 30, 2005, to report to the Legislature and the Governor on the comparability and equivalency of the preparation of teachers in other states in the areas of basic skills proficiency and fifth year programs.

(7) Existing law establishes university and district teacher intern programs.

This bill would require the Commission on Teacher Credentialing to ensure that each district and university internship program in California provides program elements to its interns as required by the federal No Child Left Behind Act of 2001 and its implementing regulations.

(8) Existing law establishes the Principal Training Program, administered by the Superintendent of Public Instruction, with the approval of the State Board of Education. Incentive funding is awarded pursuant to the program to provide schoolsite administrators with instruction and training in areas that include, among others, school financial and personnel management and the curriculum frameworks and instructional materials aligned to the state academic standards.

This bill would require that instruction and training include instruction related to personnel management, including hiring, recruitment and retention practices and misassignments of certificated personnel and that instruction and training in the curriculum frameworks and instructional materials aligned to the state academic standard, include ensuring the provision of sufficient textbooks and instructional materials as required by law.

(9) Existing law establishes within the Public Schools Accountability Act of 1999, the High Priority Schools Grant Program and requires a school district that has a school participating in the program to submit a report to the Superintendent of Public Instruction that includes specified information.

This bill would require that, commencing with the 2004–05 fiscal year, for a district with a school initially applying to participate in the program on or after July 2004, the report include whether at least 80% of the teachers assigned to the school are credentialed and the number of classes in which 20% or more pupils are English learners and assigned to teachers who do not possess a certificate authorizing the holder to teach English language development to English learners or have completed training that would authorize them to teach English language development to English learners or are otherwise authorized by law to do so.

(10) Existing law requires the State Department of Education to establish a statewide system of school support that would provide intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. Existing law requires the system to provide assistance by reviewing and analyzing all facets of a school's operation and by assisting the school in developing recommendations for improving pupil performance and school operations.

This bill would require the review and analysis to include the recruitment, hiring, and retention of principals, teachers, and other staff, including vacancy issues and the roles and responsibilities of district and school management personnel. The bill would authorize the system to access the assistance of the Fiscal Crisis and Management Assistance Team to review district or school recruitment, hiring, and retention practices. The bill would require the system also to assist schools and districts in efforts to eliminate misassignments of certificated personnel.

(11) The bill would declare that the Legislature encourages school districts to provide all the schools it maintains that are ranked in deciles 1 to 3, inclusive, of the Academic Performance Index first priority to review resumes and job applications received by the district from credentialed teachers.

(12) 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.

(13) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 42127.6 of the Education Code is amended to read:

42127.6. (a)(1) A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8. The county superintendent shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools * * * shall report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions and shall do at least one of the following and all actions that are necessary * * * to ensure that the district meets its financial obligations:

(A) Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.

(B) Conduct a study of the financial and budgetary conditions of the district that * * * includes, but is not * * * limited to, a review of internal controls. If, in the course of this review, the county superintendent determines that his or her office requires analytical assistance or expertise that is not available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent of Public Instruction, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(C) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(D) Require the district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(E) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(F) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

(G) Assign the Fiscal Crisis and Management Assistance Team to review teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a review team is assigned to a school district, the district shall follow the recommendations of the team, unless the district shows good cause for failure to do so. The Fiscal Crisis and Management

Assistance Team may not recommend an action that would abrogate a contract that governs employment.

(2) Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent of Public Instruction.

(3) An employee of a school district who provides information regarding improper governmental activity, as defined in Section 44112, is entitled to the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25.

(b) Within five days of the county superintendent making the determination specified in subdivision (a), a school district may appeal the basis of the determination * * * and any of the proposed actions that the county superintendent has indicated that he or she will take to further examine the financial condition of the district. The Superintendent of Public Instruction shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent of Public Instruction in writing of that determination and the basis for that determination. The notification shall include the assumptions used in making the determination and shall be * * * provided to the superintendent of the school district and parent and teacher organization of the district.

(d) Within five days of the county superintendent making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent of Public Instruction. The Superintendent * * * shall sustain or deny the appeal within 10 days. If the governing board of the school district appeals the determination, the county superintendent of schools may stay any action of the governing board that he or she determines is inconsistent with the * * * ability of the district to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent of Public Instruction.

(e) If the appeal described in subdivision (d) is denied or not filed, or if the district has a negative certification pursuant to Section 42131, the county superintendent, in consultation with the Superintendent of Public Instruction, shall * * * take at least one of the actions described in paragraphs (1) to (5), inclusive, and all actions that are necessary to ensure that the district meets its financial obligations and shall make a report to the Superintendent about the financial condition of the district and remedial actions proposed by the county superintendent.

(1) Develop and impose, in consultation with the Superintendent of Public Instruction and the school district governing board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.

(2) Stay or rescind any action that is determined to be inconsistent with the ability of the school * * * district to meet its obligations for the current or subsequent fiscal year. This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Assist in developing, in consultation with the governing board of the school district, a financial plan that will enable the district to meet its future obligations.

(4) Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted.

(5) As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on his or her behalf.

(f) Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support the necessity for these actions.

(g) This section does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(h) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent of Public Instruction shall develop * * * and distribute to affected school districts and county offices of education * * * advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(i) Notwithstanding Section 42647 or 42650 * * * or any other * * * law, a county treasurer shall not honor any warrant if, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent or the Superintendent of Public Instruction, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

(j) Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

(k) The Superintendent of Public Instruction shall monitor the efforts of a county office of education in exercising its authority under this section and may exercise any of that authority if he or she finds that the actions of the county superintendent of schools are not effective in resolving the financial problems of the school district. Upon a decision to exercise the powers of the county superintendent of schools, the county superintendent of schools is relieved of those powers assumed by the Superintendent. In addition to the actions taken by the county superintendent, the Superintendent of Public Instruction shall take further actions to ensure the long-term fiscal stability of the district. The county office of education shall reimburse the Superintendent of Public Instruction for all of his or her costs in exercising his or her authority under this subdivision. The Superintendent of Public Instruction shall promptly notify the county superintendent of schools, the county board of education, the superintendent of the school district, the governing board of the school district, the appropriate policy and fiscal committees of each house of the Legislature, and the Department of Finance of his or her decision to exercise the authority of the county superintendent of schools.

SEC. 2. Section 44225.6 of the Education Code is amended to read:

44225.6. (a) By April 15 of each year, the commission shall report to the Legislature and the Governor on the * * * availability of teachers * * * in California. This report shall include the following information:

(1) The number of individuals recommended for credentials by institutions of higher education and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 42253.3 and 42253.4.

(2) The number of individuals recommended by school districts operating district internship programs and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 42253.3 and 42253.4.

(3) The number of individuals receiving an initial credential based on a program completed outside of California and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 42253.3 and 42253.4.

(4) The number of individuals receiving an emergency permit, credential waiver, or other authorization that does not meet the definition of a highly qualified teacher under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

* * * (5) By county and school district, the number of individuals serving in the following capacities * * * and as a percentage of the total number of individuals serving as teachers in the county * * * and school district:

(A) University internship.

(B) District internship.

(C) Preinternship.

(D) Emergency permit.

(E) Credential waiver.

(F) Preliminary or professional clear credential.

(G) An authorization, other than those listed in this paragraph, that does not meet the definition of a highly qualified teacher under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) by category of authorization.

(H) Certificate issued pursuant to Section 42253.3.

(I) Certificate issued pursuant to Section 42253.4.

(J) Certificate of completion issued pursuant to Section 42253.10.

(6) The specific subjects and teaching areas in which there are a sufficient number of new holders of credentials to fill the positions currently held by individuals with emergency permits.

(b) The commission shall make this report available to school districts and county offices of education to assist them in the recruitment of credentialed teachers and shall make the report and supporting data publicly available on the commission's Web site.

(c) A common measure of whether teacher preparation programs are meeting the challenge of preparing increasing numbers of new teachers is the number of teaching credentials awarded. The number of teaching credentials recommended by these programs and awarded by the commission are indicators of the productivity of teacher preparation programs. The commission shall include in the report prepared for the Legislature and Governor pursuant to subdivision (a) the total number of teaching credentials recommended by all accredited teacher preparation programs authorized by the commission and the number recommended by each of the following:

(1) The University of California system.

(2) The California State University system.

(3) Independent colleges and universities that offer teacher preparation programs approved by the commission.

(4) Other institutions that offer teacher preparation programs approved by the commission.

SEC. 3. Section 44258.9 of the Education Code is amended to read:

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low. To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (c).

(b)(1) Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment and teacher vacancies based on past experience or other available information. The county superintendent of schools shall give priority to schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, if those schools are not currently under review through a state or federal intervention program.

(B) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of

certificated personnel and teacher vacancies shall be submitted to each affected district within 30 calendar days of the monitoring activity.

(c) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing and the department summarizing the results of all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by * * * the governing * * * board of a school district under the authority of Sections 44256, 44258.2, and 44263 * * *.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) Information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English learners the assigned teacher possesses a certificate issued pursuant to Section 44253.3 or 44253.4 or has completed training pursuant to Section 44253.10 or is otherwise authorized by statute.

(5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

* * * (d) The Commission on Teacher Credentialing shall submit biennial reports to the Legislature concerning teacher assignments and misassignments which shall be based, in part, on the annual reports of the county superintendents of schools.

(e)(1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credential holders.

Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

(2) Commencing July 1, 1989, any certificated person who * * * is required by an administrative superior to accept an assignment for which he or she has no legal authorization shall, after exhausting any existing local remedies, notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools shall, within 15 working days, advise the affected certificated person concerning the legality of his or her assignment. There shall be no adverse action taken against a certificated person who files a notification of misassignment with the county superintendent of schools. During the period of the misassignment, the certificated person who * * * files a written notification with the county superintendent of schools shall be exempt from the provisions of Section 45034. If it is determined that a misassignment has taken place, any performance evaluation of the employee under Sections 44660 to 44664, inclusive, in any misassigned subject shall be nullified.

(3) * * * The county superintendent of schools shall notify, through the office of the district superintendent, any certificated school administrator responsible for the assignment of a certificated person to a position for which he or she has no legal authorization of the misassignment and shall advise him or her to correct the assignment within 30 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignment if the certificated school administrator has not corrected the misassignment within 30 days of the initial notification, or if the certificated school administrator has not described, in writing, within the 30-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(4) * * * The county superintendent of schools shall notify any superintendent of a school district in which 5 percent or more of all certificated teachers in the secondary schools are found to be misassigned of the misassignments and shall advise him or her to correct the misassignments within 120 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignments if the school district superintendent has not corrected the misassignments within 120 days of the initial notification, or if the school district superintendent of schools has not described, in writing, within the 120-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

* * * (f) An applicant for a professional administrative service credential shall be required to demonstrate knowledge of existing credentialing laws, including knowledge of assignment authorizations.

(g) The Superintendent of Public Instruction shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (c) to the Legislature. The Legislature may hold, within a reasonable period after receipt of the summary, public hearings on pupil access to teachers and to related statutory provisions. The Legislature may also assign one or more of the standing committees or a joint committee, to determine the following:

(1) The effectiveness of the reviews required pursuant to this section.

(2) The extent, if any, of vacancies and misassignments.

(3) The need, if any, to assist schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to eliminate vacancies and misassignments.

SEC. 4. Section 44274 of the Education Code is amended to read:

44274. (a) The commission shall conduct periodic reviews * * * to determine whether any state has established teacher preparation standards, including standards for teachers of English learners, that are at least comparable and equivalent to teacher preparation standards in California.

(b) If the commission determines, pursuant to subdivision (a), that the teacher preparation standards established by any state are at least comparable and equivalent to teacher preparation standards in California, the commission shall initiate negotiations with that state to provide reciprocity in teacher credentialing.

(c)(1) The commission shall grant an appropriate credential to any applicant from another state who * * * completes teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California, as determined by the commission pursuant to this section, if the applicant * * * meets the requirements of California for the basic skills proficiency test pursuant to subdivision (d) of Section 44275.3 and teacher fitness pursuant to Sections 44339, 44340, and 44341.

(2) If the commission determines that the teacher licensing body of another state requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills proficiency test, applicants from that state are not required to meet the requirements of California for the basic skills proficiency test.

(d) A reciprocity agreement established pursuant to subdivision (b) shall not exempt an out-of-state applicant from submitting an identification card pursuant to Section 44340 and obtaining a certificate of clearance, credential, permit, or certificate of eligibility from the commission.

(e) The commission shall issue credentials to out-of-state prepared teachers based on all of the following:

(1) Equivalent preparation received outside of this state.

(2) Equivalent reading instruction, as determined by the reviews conducted pursuant to Section 44274.1.

(3) Equivalent subject matter programs or credential emphasis programs, as determined by the reviews conducted pursuant to Section 44274.1.

SEC. 5. Section 44275.3 of the Education Code is amended to read:

44275.3. Notwithstanding any other provision of law:

(a) It is the intent of the Legislature that both of the following occur:

(1) That this section provide flexibility to enable school districts to recruit credentialed out-of-state elementary, secondary, and special education teachers to relocate to California.

(2) That any and all teachers hired in California pursuant to this section fully meet the requirements of the State of California * * * or requirements deemed to be equivalent.

(b) Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject or single subject teaching credential or a five-year preliminary education specialist credential to any out-of-state prepared teacher who meets all of the following requirements:

(1) Possesses a baccalaureate degree from a regionally accredited institution of higher education.

(2) Completed a teacher preparation program at a regionally accredited institution of higher education.

(3) Successfully completes any criminal background check conducted pursuant to Sections 44339, 44340, and 44341 for credentialing purposes.

(4) Earned or qualified for a corresponding elementary, secondary, or special education teaching credential based upon the out-of-state teacher preparation program. The commission shall determine the area of concentration of the California education specialist credential based on the special education program completed out of state.

(c) An out-of-state prepared teacher who has been issued a California five-year preliminary multiple subject, single subject, or education specialist teaching credential shall pass the state basic skills proficiency test, administered by the commission pursuant to Section 44252, within one year of the issuance date of the credential in order to be eligible to continue teaching pursuant to this section, unless the commission determines that the teacher licensing body of the state in which the teacher completed his or her preparation requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills proficiency test.

(d) The commission shall issue a professional clear credential to an out-of-state prepared teacher who has met the requirements in subdivision (b) and who meets the following requirements:

(1) Passage of the state basic skills proficiency test administered by the commission pursuant to Section 44252, unless the commission determines that the teacher licensing body of the state in which the teacher completed his or her preparation requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills proficiency test.

(2) Demonstration of subject matter competence by completion of coursework or an examination approved by the commission pursuant to paragraph (5) of subdivision (b) of Section 44259. Completion of subject matter in another state that * * * is determined by the commission to be comparable or equivalent pursuant to paragraph (1) of subdivision (a) of Section 44274.1 shall meet this requirement.

(3) Completion of a course, or for multiple subject and education specialist credentials, a course or an examination, on the various methods of teaching reading pursuant to paragraph (4) of subdivision (b) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent pursuant to paragraph (2) of subdivision (a) of Section 44274.1 shall meet this requirement.

(4) Completion of a course or examination on the provisions and principles of the United States Constitution pursuant to paragraph (6) of subdivision (b) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.

* * *

(5) With the exception of the education specialist credential, completion of study and field experience in methods of delivering appropriate educational services to pupils with exception-

al needs in regular education programs. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.

(6) Completion of the study of computer-based technology through demonstration by course or examination of basic competence in the use of computers in the classroom, and study of advanced computer-based technology, including the uses of technology in educational settings pursuant to subparagraph (C) of paragraph (3) of subdivision (c) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.

(7) Completion of a fifth-year program at a regionally accredited institution of higher education, except that the commission shall eliminate this requirement for any candidate who has completed an induction program for beginning teachers. Completion of preparation in another state determined by the commission to be comparable and equivalent to the requirement specified by this paragraph shall meet this requirement.

(8) A teacher holding a specialist credential pursuant to this section shall complete the requirements for nonspecial education pedagogy and a supervised field experience program in general education pursuant to Section 44265.

(9) A teacher holding a specialist credential pursuant to this section shall complete a program for the Professional Level II credential accredited by the Committee on Accreditation, established pursuant to Section 44373, and the requirements specified in this subdivision.

SEC. 6. Section 44325 of the Education Code is amended to read:

44325. (a) The Commission on Teacher Credentialing shall issue district intern credentials authorizing persons employed by a school district that maintains kindergarten and grades 1 to 12, inclusive, or that maintains classes in bilingual education to provide classroom instruction to pupils in those grades and classes in accordance with the requirements of Section 44830.3. The commission, until January 1, 2008, also shall issue district intern credentials authorizing persons employed by a school district to provide classroom instruction to pupils with mild and moderate disabilities in special education classes, in accordance with the requirements of Section 44830.3.

(b) Each district intern credential is valid for a period of two years. * * * A credential may be valid for three years if the intern is participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities * * * or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities. Upon the recommendation of the school district, the commission may grant a one-year extension of the district intern credential.

(c) The commission shall require each applicant for a district intern credential to demonstrate that he or she meets all of the following minimum qualifications for that credential:

(1) The possession of a baccalaureate degree conferred by a regionally accredited institution of postsecondary education.

(2) The successful passage of the state basic skills proficiency test administered under Sections 44252 and 44252.5.

(3) The successful completion of the appropriate subject matter examination administered by the commission, or a commission-approved subject matter preparation program for the subject areas in which the district intern is authorized to teach.

(4) The oral language component of the assessment program leading to the bilingual-crosscultural language and academic development certificate for persons seeking a district intern credential to teach bilingual education classes.

(d) The commission shall apply the requirements of Sections 44339, 44340, and 44341 to each applicant for a district intern credential.

(e) The Commission on Teacher Credentialing shall ensure that each district internship program in California provides program elements to its interns as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and its implementing regulations.

SEC. 7. Section 44453 of the Education Code is amended to read:

44453. (a) For admission to all teaching internship programs authorized by this article, an applicant shall have a baccalaureate or higher degree from a regionally accredited institution of postsecondary education and shall pass a subject matter examination as provided in Section 44280 or complete a commission-approved subject matter program as provided in Section 44310.

(b) The Commission on Teacher Credentialing shall ensure that each university internship program in California provides program elements to its interns as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and its implementing regulations.

SEC. 8. Section 44511 of the Education Code is amended to read:

44511. (a) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award incentive funding to provide schoolsite administrators with instruction and training in areas including, but not limited to, the following:

(1) School financial and personnel management. This training shall specifically provide instruction related to personnel management, including hiring, recruitment, and retention practices and misassignments of certificated personnel.

(2) Core academic standards.

(3) Curriculum frameworks and instructional materials aligned to the state academic standards, including ensuring the provisions of textbooks and instructional materials as defined in Section 60119.

(4) The use of pupil assessment instruments, specific ways of mastering the use of assessment data from the Standardized Testing and Reporting Program, and school management technology to improve pupil performance.

(5) The provision of instructional leadership and management strategies regarding the use of instructional technology to improve pupil performance.

(6) Extension of the knowledge, skills, and abilities acquired in the preliminary administrative preparation program that is designed to strengthen the ability of administrators to serve all pupils in the school to which they are assigned.

(b) The additional instruction and training areas that may be considered to improve pupil learning and achievement based upon the needs of participating schoolsite administrators, include pedagogies of learning, motivating pupil learning, collaboration, conflict resolution, diversity, parental involvement, employee relations, and the creation of effective learning and workplace environments.

(c) All local education agencies are eligible to apply for funds appropriated for the purpose of this article.

SEC. 9. Section 52055.640 of the Education Code is amended to read:

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district. Commencing with the 2004–05 fiscal year, for a school district with a school initially applying to participate in the program on or after July 1, 2004, the report shall include whether at least 80 percent of the teachers assigned to the school are credentialed and the number of classes in which 20 percent or more pupils are English learners and assigned to teachers who do not possess a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or have not completed training pursuant to Section 44253.10, or are not otherwise authorized by statute to be assigned to those classes. This paragraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing and Reporting Program and the writing sample that is part of that program.

(2) The results of the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

SEC. 10. Section 52059 of the Education Code is amended to read:

52059. (a) For purposes of complying with the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), a Statewide System of School Support shall be established by the * * * department * * * to provide a statewide system of intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. The system shall consist of regional consortia, which may include county

offices of education and school districts, that work collaboratively with school districts and county offices of education to meet the needs of school districts and schools in need of improvement.

(b) The system shall provide assistance to school districts and schools in need of improvement by:

(1) Reviewing and analyzing all facets of a school's operation, including the[1] following:

(A) The design and operation of the instructional program offered by the school * * *.

(B) The recruitment, hiring, and retention of principals, teachers, and other staff, including vacancy issues. The system may request the assistance of the Fiscal Crisis and Management Assistance Team to review school district or school recruitment, hiring, and retention practices.

(C) The roles and responsibilities of district and school management personnel.

(2) Assisting the school in developing recommendations for improving pupil performance and school operations.

(3) Assisting schools and school districts in efforts to eliminate misassignments of certificated personnel.

(c) In carrying out this article, the * * * department * * * shall ensure that support is provided in the following order of priority:

(1) To school districts or county offices of education with schools that are subject to corrective action under paragraph (7) of subsection (b) of Section 6316 of Title 20 of the United States Code.

(2) To school districts or county offices of education with schools that are identified as being in need of improvement pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code.

(3) To provide support and assistance to school districts and county offices of education with schools participating under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) that need support and assistance to achieve the purposes of that act.

(4) To provide support and assistance to other school districts and county offices of education with schools participating in a program carried out under this chapter.

(d) For purposes of this article, all references to schools shall include charter schools.

(e) Funds shall be distributed under this article based on the number of schools and enrollment of those schools in each region that have been identified as being in need of improvement pursuant to Section 6316 of Title 20 of the United States Code, or are participating in the programs conducted under this chapter.

SEC. 11. The Legislature encourages school districts to provide all the schools it maintains that are ranked in deciles 1 to 3, inclusive, of the Academic Performance Index first priority to review resumes and job applications received by the district from credentialed teachers. It is the intent of the Legislature that after all schools maintained by the district that are ranked in deciles 1 to 3, inclusive, of the Academic Performance Index have had the opportunity to review the resumes and job applications received by the district from credentialed teachers, a school district make the resumes and applications available to other schools maintained by the district. It is not the intent of the Legislature to require, as a condition of employment, that an applicant teacher accept an offer from a school ranked in any of deciles 1 to 3, inclusive, of the Academic Performance Index.

SEC. 12. In developing the annual budget for the 2006–07 fiscal year and subsequent fiscal years, the Department of Finance, in consultation with the State Department of Education, shall review the implementation of legislation enacted pursuant to the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) and shall propose whether to use the Academic Performance Index rankings of later years in determining the applicability of legislation limited to schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index.

[1] So in enrolled bill.

SEC. 13. By June 30, 2005, the Commission on Teacher Credentialing shall report to the Legislature and the Governor on the comparability and equivalency of the preparation of teachers in other states in the areas of basic skills proficiency and fifth-year programs, including, but not limited to, the number of states that have met these requirements.

SEC. 14. 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.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that pupils in the public schools have access to qualified teachers and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) as soon as possible, it is necessary for this act to take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—UNIFORM COMPLAINT PROCESS

CHAPTER 903

A.B. No. 2727

AN ACT to amend Section 35186 of the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2727, Daucher. Schools: uniform complaint process.

Existing regulations require each local educational agency to adopt policies and procedures for the investigation and resolution of complaints and require each local educational agency to include in its policies and procedures the person, employee, or agency position or unit responsible for receiving complaints, investigating complaints, and ensuring local educational agency compliance.

Senate Bill 550, of the 2003–04 Regular Session, would require a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment. SB 550 would require a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage.

This bill would require a school district to use its uniform complaint process to help identify and resolve any emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff instead of conditions of facilities that are not maintained in a clean and safe manner or in good repair.

This bill would become operative only if Senate Bill 850 [1] is also enacted.

This bill would declare that it is to take effect immediately as an urgency statute.

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

[1] So in enrolled bill. Probably should read Senate Bill 550.

SECTION 1. Section 35186 of the Education Code, as proposed to be added by Senate Bill 550 of the 2003–04 Regular Session, is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, * * * emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state adopted or district adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school in order to complete required homework assignments.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a certificated teacher is not assigned to teach the class.

SEC. 13. By June 30, 2005, the Commission on Teacher Credentialing shall report to the Legislature and the Governor on the comparability and equivalency of the preparation of teachers in other states in the areas of basic skills proficiency and fifth-year programs, including, but not limited to, the number of states that have met these requirements.

SEC. 14. 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.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that pupils in the public schools have access to qualified teachers and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) as soon as possible, it is necessary for this act to take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—UNIFORM COMPLAINT PROCESS

CHAPTER 903

A.B. No. 2727

AN ACT to amend Section 35186 of the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2727, Daucher. Schools: uniform complaint process.

Existing regulations require each local educational agency to adopt policies and procedures for the investigation and resolution of complaints and require each local educational agency to include in its policies and procedures the person, employee, or agency position or unit responsible for receiving complaints, investigating complaints, and ensuring local educational agency compliance.

Senate Bill 550, of the 2003–04 Regular Session, would require a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment. SB 550 would require a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage.

This bill would require a school district to use its uniform complaint process to help identify and resolve any emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff instead of conditions of facilities that are not maintained in a clean and safe manner or in good repair.

This bill would become operative only if Senate Bill 850 [1] is also enacted.

This bill would declare that it is to take effect immediately as an urgency statute.

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

[1] So in enrolled bill. Probably should read Senate Bill 550.

SECTION 1. Section 35186 of the Education Code, as proposed to be added by Senate Bill 550 of the 2003–04 Regular Session, is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, * * * emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (e) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state adopted or district adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school in order to complete required homework assignments.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a certificated teacher is not assigned to teach the class.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20 percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents and guardians of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(h) For purposes of this section, the following definitions apply:

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a vacant teacher position as defined in subparagraph (A) of paragraph (5) of subdivision (b) of Section 33126.

SEC. 2. This act shall become operative only if Senate Bill 550 of the 2003–04 Regular Session is enacted.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that all pupils in the public schools are housed in adequately maintained school facilities and to implement the settlement agreement in the case of Williams v. State of California (Super. Ct., San Francisco, No. CGC–00–312236) as soon as possible, it is necessary for this act to take effect immediately.

ANIMALS—BIRDS—FORCE FEEDING

CHAPTER 904

S.B. No. 1520

AN ACT to add Chapter 13.4 (commencing with Section 25980) to Division 20 of the Health and Safety Code, relating to force fed birds.

[Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1520, Burton. Force fed birds.

Existing law authorizes an officer to issue a citation to a person or entity keeping horses or other equine animals for hire if the person or entity fails to meet standards of humane treatment regarding the keeping of horses or other equine animals.

This bill would establish similar provisions regarding force feeding a bird, as defined. The bill would prohibit a person from force feeding a bird for the purpose of enlarging the bird's liver beyond normal size, and would prohibit a person from hiring another person to do so. The bill would also prohibit a product from being sold in the state if it is the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size. The bill would authorize an officer to issue a citation for a violation of those provisions in an amount up to $1,000 per violation per day.

The bill would provide that these prohibitions shall become operative on July 1, 2012.

Until July 1, 2012, this bill would prohibit an existing or future civil or criminal cause of action for engaging in an act prohibited by the bill, from proceeding against a person or entity engaged in, or controlled by persons or entities who were engaged in, agricultural practices that involved force feeding birds at the time of the enactment of this bill.

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

SECTION 1. Chapter 13.4 (commencing with Section 25980) is added to Division 20 of the Health and Safety Code, to read:

Chapter 13.4. Force Fed Birds

25980. For purposes of this section, the following terms have the following meanings:

(a) A bird includes, but is not limited to, a duck or goose.

(b) Force feeding a bird means a process that causes the bird to consume more food than a typical bird of the same species would consume voluntarily. Force feeding methods include, but are not limited to, delivering feed through a tube or other device inserted into the bird's esophagus.

25981. A person may not force feed a bird for the purpose of enlarging the bird's liver beyond normal size, or hire another person to do so.

25982. A product may not be sold in California if it is the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size.

25983. (a) A peace officer, officer of a humane society as qualified under Section 14502 or 14503 of the Corporations Code, or officer of an animal control or animal regulation department of a public agency, as qualified under Section 830.9 of the Penal Code, may issue a citation to a person or entity that violates this chapter.

(b) A citation issued under this section shall require the person cited to pay a civil penalty in an amount up to one thousand dollars ($1,000) for each violation, and up to one thousand dollars ($1,000) for each day the violation continues. The civil penalty shall be payable to the local agency initiating the proceedings to enforce this chapter to offset the costs to the agency related to court proceedings.

(c) A person or entity that violates this chapter may be prosecuted by the district attorney of the county in which the violation occurred, or by the city attorney of the city in which the violation occurred.

25984. (a) Sections 25980, 25981, 25982, and 25983 of this chapter shall become operative on July 1, 2012.

(b)(1) No civil or criminal cause of action shall arise on or after January 1, 2005, nor shall a pending action commenced prior to January 1, 2005, be pursued under any provision of law against a person or entity for engaging, prior to July 1, 2012, in any act prohibited by this chapter.

(2) The limited immunity from liability provided by this subdivision shall not extend to acts prohibited by this chapter that are committed on or after July 1, 2012.

(A) One-half of the amount shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) One-half of the amount shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(4) With respect to wagers on each breed of racing that originate in California, an amount equal to 2 percent of the first two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1.5 percent of the next two hundred fifty million dollars ($250,000,000) of handle from all advance deposit wagers originating from within California annually, and an amount equal to 1 percent of handle from all advance deposit wagers originating from within California in excess of five hundred million dollars ($500,000,000) annually, shall be distributed as satellite wagering commissions. The satellite wagering facility commissions calculated in accordance with this subdivision shall be distributed to each satellite wagering facility and racing association or fair in the zone in which the wager originated in the same relative proportions that the satellite wagering facility or the racing association or fair generated satellite commissions during the previous calendar year. In the event of a reduction in the satellite wagering commissions, pursuant to this section, the benefits therefrom shall be distributed equitably as purses and commissions to all associations and racing fairs generating advance deposit wagers in proportion to the handle generated by those associations and racing fairs. For purposes of this section, the purse funds distributed pursuant to Section 19605.72 shall be considered to be satellite wagering facility commissions attributable to thoroughbred races at the locations described in that section.

(5) With respect to wagers on each breed of racing that originate in California for each racing meeting, after the payment of contractual obligations to the licensee, the betting system, or the multijurisdictional wagering hub, and the distribution of the amounts set forth in paragraphs (1) through (4), inclusive, the amount remaining shall be distributed to the racing association or fair that is conducting live racing on that breed during the calendar period in the zone in which the wager originated, and this amount shall be allocated to that racing association or fair as commissions, to horsemen participating in that racing meeting in the form of purses, and as incentive awards, in the same relative proportion as they were generated or earned during the prior calendar year at that racing association or fair on races conducted or imported by that racing association or fair after making all deductions required by applicable law. Purse funds generated pursuant to this section may be utilized to pay 50 percent of the total costs and fees incurred due to the implementation of advance deposit wagering. "Incentive awards" shall be those payments provided for in Sections 19617.2, 19617.7, 19617.8, 19617.9, and 19619. The amount determined to be payable for incentive awards shall be payable to the applicable official registering agency and thereafter distributed as provided in this chapter. If the provisions of Section 19601.2 apply, then the amount distributed to the applicable racing associations or fairs from advance deposit wagering shall first be divided between those racing associations or fairs in direct proportion to the total amount wagered in the applicable zone on the live races conducted by the respective association or fair. Notwithstanding this requirement, when the provisions of subdivision (b) of Section 19607.5 apply to the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento, then the total amount distributed to the applicable racing associations or fairs shall first be divided equally, with 50 percent distributed to applicable fairs and 50 percent distributed to applicable associations. For purposes of this subdivision, the zones of the state shall be as defined in Section 19530.5, except as modified by the provisions of subdivision (f) of Section 19601, and the combined central and southern zones shall be considered one zone.

Notwithstanding any provision of this section to the contrary, the distribution of the market access fee, other than the distributions specified in paragraph (1) or (2), may be altered upon the approval of the board, in accordance with an agreement signed by all parties receiving a distribution under paragraphs (4) and (5).

(h) Notwithstanding any provisions of this section to the contrary, all funds derived from advance deposit wagering that originate from California for each racing meeting on out-of-state and out-of-country thoroughbred races conducted after 6 p.m., Pacific time, shall be distributed in accordance with this subdivision. With respect to these wagers, 50 percent of the amount remaining after the payment of contractual obligations to the multijurisdictional wagering hub, betting system, or licensee and the amounts set forth in paragraphs (1) through (5), inclusive, of subdivision (g) shall be distributed as commissions to thoroughbred associations and racing fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subdivision (g), and the remaining 50 percent, together with all funds derived for each racing meeting from advance deposit wagering originating from California out-of-state and out-of-country harness and quarter horse races conducted after 6 p.m., Pacific time, shall be distributed as commissions on a pro rata basis to the applicable licensed quarter horse association and the applicable licensed harness association, based upon the amount handled instate, both on- and off-track, on each breed's own live races in the previous year by that association, or it's predecessor association. One-half of the amount thereby received by each association shall be retained by that association as a commission, and the other half of the money received shall be distributed as purses to the horsemen participating in its current or next scheduled licensed racing meeting.

(i) Notwithstanding any provisions of this section to the contrary, all funds derived from advance deposit wagering which originate from California for each racing meeting on out-of-state and out-of-country nonthoroughbred races conducted before 6 p.m., Pacific time, shall be distributed in accordance with this subdivision. With respect to these wagers, 50 percent of the amount remaining after the payment of contractual obligations to the multijurisdictional wagering hub, betting system, or licensee and the amounts set forth in paragraphs (1) through (5), inclusive, of subdivision (g) shall be distributed as commissions as provided in subdivision (h) for licensed quarter horse and harness associations, and the remaining 50 percent shall be distributed as commissions to the applicable thoroughbred associations or fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subdivision (g).

(j) A racing association, a fair, or a satellite wagering facility may accept and facilitate the placement of any wager from a patron at its facility that a California resident could make through a betting system or multijurisdictional wagering hub duly offering advance deposit wagering in this state, and the facility accepting the wager shall receive a 2-percent commission on that wager in lieu of any distribution for satellite commissions pursuant to subdivision (g).

(k) Any disputes concerning the interpretation or application of this section shall be resolved by the board.

This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SCHOOLS AND SCHOOL DISTRICTS—INSTRUCTIONAL MATERIALS—SUFFICIENCY

CHAPTER 118

A.B. No. 831

AN ACT to amend Sections 1240, 17592.70, 35186, 41500, 41501, 41572, 44258.9, 48642, 49436, 52055.640, 52295.35, 56836.165, and 60119 of, to add Section 88 to, and to repeal Section 32228.6 of, the Education Code, to amend Item 6110-197-0890 of Section 2.00 of Chapter 208 of the Statutes of 2004 (the Budget Act of 2004), and to amend Sections 22 and 23 of Chapter 900 of the Statutes of 2004, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 25, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 831, Committee on Education. Education.

(1) Existing law requires a county superintendent of schools to conduct an annual review of the use of textbooks and instructional materials within the 1st 4 weeks of the school year.

This bill would, instead, require that review to be completed by the 4th week of the school year, and would permit the county superintendent of schools in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index to utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials.

(2) The existing School Safety and Violence Prevention Act declares the intent of the Legislature that public schools serving pupils in kindergarten or any of grades 8 to 12, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools. Existing law requires the Superintendent of Public Instruction to provide funds to school districts serving those specified pupils. Existing law makes the act inoperative on July 1, 2005, and repeals it on January 1, 2006.

This bill would delete the inoperative and repeal dates, extending the operation of the act indefinitely.

(3) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment. Existing law requires a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and the location to obtain a form to file a complaint in case of a shortage.

This bill would, in addition, require that notice to contain a statement informing parents and guardians that there should be no teacher vacancies or misassignments, as defined.

(4) Existing law, the Pupil Nutrition, Health, and Achievement Act of 2001, prohibits the sale of certain beverages and food items at elementary, middle, and junior high schools. Existing law requires the State Department of Education to monitor the implementation of that act and report its evaluation to the Legislature by January 1, 2005.

This bill would instead require the department to report its evaluation to the Legislature by May 1, 2005.

(5) Existing law establishes within the Public Schools Accountability Act of 1999 the High Priority Schools Grant Program and requires a school district that has a school participating in the program to submit a report to the Superintendent of Public Instruction that includes specified information, including, but not limited to, information regarding the availability of certain instructional materials.

This bill would, for a school district that initially applies to participate in the High Priority Schools Grant Program during the 2004–05 fiscal year, or any fiscal year thereafter, apply the definition of "sufficient textbooks or instructional materials" from the Pupil Textbook and Instructional Materials Incentive Program Act to these provisions.

(6) Existing law establishes the Education Technology Grant Program of 2002 to provide grants to eligible school districts, county offices of education, and charter schools for purposes of implementing and supporting a comprehensive system that effectively uses technology to improve pupil academic achievement. Existing law requires that the minimum amount of a grant for a region be at least $1,000,000 or 2% of available grant funds, whichever amount is greater.

This bill would modify that minimum grant amount to $500,000 or 2% of available grant funds, whichever amount is greater.

(7) Existing law, for the 2004–05 fiscal year and each fiscal year thereafter, requires the Superintendent of Public Instruction to calculate for each special education local plan area an amount based on (a) the number of children and youth residing in foster family homes and foster family agencies, (b) the licensed capacity of group homes licensed by the State Department of Social Services, and (c) the number of children and youth ages 3 through 21

referred by the State Department of Developmental Services who are residing in certain skilled nursing or intermediate care facilities and the number of youth ages 18 through 21 referred by the State Department of Developmental Services who are residing in certain community care facilities.

This bill would require the Superintendent of Public Instruction to continue to apportion funds from Section A of the State School Fund to each special education local plan area equal to the amount apportioned at the advance apportionment for that fiscal year.

(8) Existing law, the Pupil Textbook and Instructional Materials Incentive Program Act, requires the governing board of a school district to hold a public hearing and make a determination as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, as defined, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education.

This bill would, in addition, require the governing board of a school district that makes that determination to provide information relating to the percentage or number of pupils who lack sufficient textbooks or instructional materials to classroom teachers and the public, thereby creating a state-mandated local program.

(9) Existing law appropriates certain funds for the 21st Century Community Learning Centers program contained within the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and specifies the purposes for which each appropriation may be used.

This bill would make an appropriation as it would authorize any recipient of a grant award from these funds during the 2004–05 fiscal year to use those awarded funds for other purposes contained in existing law, if the recipient submits documentation as part of its expenditure report that reasonably justifies to the State Department of Education that, subsequent to the grant award, it became impractical or no longer feasible to fully earn or expend those funds for the purpose for which those funds were originally granted to the recipient.

(10) Existing law, for the 2003–04 fiscal year, appropriates the sum of $138,000,000 to the State Department of Education for transfer to the Instructional Materials Fund to be apportioned to school districts on the basis of an equal amount per pupil enrolled in schools in decile 1 or 2 of the Academic Performance Index (API).

For these purposes, this bill would base enrollment on the number of pupils reported for purposes of the 2003 base API. The bill would specify that these funds may only be used to purchase instructional materials for schools in decile 1 or 2 of the Academic Performance Index (API).

(11) Existing law makes certain appropriations to the State Department of Education for the acquisition of instructional materials for school districts and for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts, and to oversee the compliance of schools with instructional materials sufficiency requirements. Existing law provides that, for the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, these appropriations are deemed to be "General Fund revenues appropriated for school districts" for the 2004–05 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" for the 2004–05 fiscal year.

This bill would, instead, include those appropriations in the calculations for the 2003–04 fiscal year.

(12) Existing law authorizes the State Department of Education to cooperate with the federal government and its agencies in securing the expeditious and equitable distribution of surplus food commodities donated by the federal government to public agencies, institutions, and organizations in California. Existing law requires the cash resources of the Donated Food Program to be deposited into the Donated Food Revolving Fund.

This bill would appropriate $1,200,000 from the Donated Food Revolving Fund for support of the State Department of Education for purposes of the Donated Food Program.

(13) This bill would also make various technical, nonsubstantive changes to existing law.

(14) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, 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.

(15) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 88 is added to the Education Code, to read:

88. "State Board" or "state board" whenever used in this code means the State Board of Education, unless the context requires otherwise.

SEC. 2. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c)(1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2)(A) To the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools.

(B) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(C) The results of the visit shall be reported to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

(D) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) * * * Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25-percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance and the sufficiency of instructional materials, as defined by Section 60119.

(E) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff, as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually present a report to the governing board of the school district and the Superintendent * * * regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i)(1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3)(A) Commencing with the 2005–06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and is not currently under review through a state or federal intervention program, the county superintendent shall specifically review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be * * * completed by the fourth week of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent of schools in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent of schools elects to conduct written surveys of teachers, the county superintendent of schools shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys.

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent * * *.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department, with approval by the State Board of Education,

to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary to the purchase the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent * * *, the Superintendent * * * shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials, from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(l)(1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent * * *, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent * * * may reclassify any certification. If a county office of education receives a negative certification, the Superintendent * * *, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent * * * at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent * * *, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent * * *.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 3. Section 17592.70 of the Education Code is amended to read:

17592.70. (a) There is hereby established the School Facilities Needs Assessment Grant Program with the purpose to provide for a one-time comprehensive assessment of school facilities needs. The grant program shall be administered by the State Allocation Board.

(b)(1) The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school newly constructed prior to January 1, 2000.

(2) For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2003 base Academic Performance Index (API) shall include any schools determined by the * * * department * * * to meet either of the following:

(A) The school meets all of the following criteria:

(i) Does not have a valid base API score for 2003.

(ii) Is operating in fiscal year 2004–05 and was operating in fiscal year 2003–04 during the Standardized Testing and Reporting (STAR) Program testing period.

(iii) Has a valid base API score for 2002 that was ranked in deciles 1 to 3, inclusive, in that year.

(B) The school has an estimated base API score for 2003 that would be in deciles 1 to 3, inclusive.

(3) The * * * department * * * shall estimate an API score for any school meeting the criteria of * * * subparagraph (A) of paragraph (2) * * *, using available testing scores and any weighting or corrective factors it deems appropriate. The department shall provide those API scores to the Office of Public School Construction and post them on its Web site within 30 days of the enactment of this section.

(c) The board shall allocate funds pursuant to subdivision (b) to school districts with jurisdiction over eligible schoolsites, based on ten dollars ($10) per pupil enrolled in the eligible school as of October 2003, with a minimum allocation of seven thousand five hundred dollars ($7,500) for each schoolsite.

(d) As a condition of receiving funds pursuant to this section, school districts shall do all of the following:

(1) Use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at a minimum, all of the following information for each schoolsite:

(A) The year each building that is currently used for instructional purposes was constructed.

(B) The year, if any, each building that is currently used for instructional purposes was last modernized.

(C) The pupil capacity of the school.

(D) The number of pupils enrolled in the school.

(E) The density of the school campus measured in pupils per acre.

(F) The total number of classrooms at the school.

(G) The age and number of portable classrooms at the school.

(H) Whether the school is operating on a multitrack, year-round calendar, and, if so, what type.

(I) Whether the school has a cafeteria, or an auditorium or other space used for pupil eating and not for class instruction.

(J) The useful life remaining of all major building systems for each structure housing instructional space, including, but not limited to, sewer, water, gas, electrical, roofing, and fire and life safety protection.

(K) The estimated costs for five years necessary to maintain functionality of each instructional space to maintain health, safety, and suitable learning environment, as applicable, including classroom, counseling areas, administrative space, libraries, gymnasiums, multipurpose and dining space, and the accessibility to those spaces.

(L) A list of necessary repairs.

(2) Use the data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or information that is available in the California Basic Education Data System for the element required in subparagraphs (D), (E), (F), and (G) of paragraph (1).

(3) Use the assessment as the baseline for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

(4) Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment. It is the intent of the Legislature that the assessments be completed as soon as possible, but not later than January 1, 2006.

(5) If a school district does not need the full amount of the allocation it receives pursuant to this section, the school district shall expend the remaining funds for making facilities repairs identified in its needs assessment. The school district shall report to the Office of Public School Construction on the repairs completed pursuant to this paragraph and the cost of the repairs.

(6) Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible schools.

SEC. 4. Section 32228.6 of the Education Code is repealed.

SEC. 5. Section 35186 of the Education Code is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes

this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent * * *, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state-adopted or district-adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school * * *.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a * * * teacher * * * vacancy exists.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20-percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents and guardians of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home * * *.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) There should be no teacher vacancies or misassignments as defined in paragraphs (2) and (3) of subdivision (h).

(4) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(h) For purposes of this section, the following definitions apply:

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a * * * position * * * to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

SEC. 6. Section 41500 of the Education Code is amended to read:

41500. (a) Notwithstanding any other provision of law, a school district and county office of education may expend in a fiscal year up to 15 percent of the amount apportioned for the block grants set forth in Article 3 (commencing with Section 41510), Article 5 (commencing with Section 41530), Article 6 (commencing with Section 41540), or Article 7 (commencing with Section 41570) for any other programs for which the school district or county office is eligible for funding, including programs whose funding is not included in any of the block grants established pursuant to this chapter. The total amount of funding a school district or county office of education may expend for a program to which funds are transferred pursuant to this section may not exceed 120 percent of the amount of state funding allocated to the school district or county office for purposes of that program in a fiscal year. For purposes of this subdivision, "total amount" means the amount of state funding allocated to a school district or county office for purposes of a particular program in a fiscal year plus the amount transferred in that fiscal year to that program pursuant to this section.

(b) A school district and county office of education shall not, pursuant to this section, transfer funds from Article 2 (commencing with Section 41505) and Article 4 (commending with Section 41520).

(c) Before a school district or county office of education may expend funds pursuant to this section, the governing board of the school district or the county board of education, as applicable, shall discuss the matter at a noticed public meeting.

(d) A school district shall * * * track transfers made pursuant to this section * * *.

SEC. 7. Section 41501 of the Education Code is amended to read:

41501. (a) The reduction made to categorical education program funding received by a basic aid school district pursuant to Section 38 of Chapter 227 of the Statutes of 2003 or Section 31 of Chapter 216 of the Statutes of 2004, or for a fiscal year subsequent to the 2004–05 fiscal year shall be deemed not to have occurred for purposes of calculating the amount of block grants a basic aid school district shall receive pursuant to this chapter.

(b) For purposes of this section, "basic aid school district" means a school district that does not receive from the state, for any fiscal year in which the section is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 8. Section 41572 of the Education Code is amended to read:

41572. A school district that receives funds pursuant to this article shall have a school level advisory committee as required by Chapter 6 (commencing with Section 52000) of Part 28, as it read on January 1, 2004, and shall have a single school plan that incorporates the requirements of Sections 18181, 52014, and 52015, as those sections read on January 1, 2004.

SEC. 9. Section 44258.9 of the Education Code is amended to read:

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low. To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (c).

(b)(1) Each county superintendent of schools shall * * * monitor and review school district certificated employee assignment practices * * * in accordance with the following * * *:

(A) Annually monitor and review schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies, as defined in subparagraphs

(A) and (B) of paragraph (5) of subdivision (b) of Section 33126, based on past experience or other available information.

* * * (B) Annually monitor and review schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, if those schools are not currently under review through a state or federal intervention program. If a review completed pursuant to this subparagraph finds that a school has no teacher misassignments or teacher vacancies, the next review of that school may be conducted according to the cycle specified in subparagraph (C), unless the school meets the criteria of subparagraph (A).

(C) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel and teacher vacancies shall be submitted to each affected district within 30 calendar days of the monitoring activity.

(c) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing and the department summarizing the results of all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by the governing board of a school district under the authority of Sections 44256, 44258.2, and 44263.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4)(A) Information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English learners the assigned teacher possesses a certificate issued pursuant to Section 44253.3 or 44253.4 or has completed training pursuant to Section 44253.10 or is otherwise authorized by statute.

(B) This paragraph shall not relieve a school district from compliance with state and federal law regarding teachers of English learners or be construed to alter the definition of "misassignment" in subparagraph (B) of paragraph (5) of subdivision (b) of Section 33126.

(5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

(d) The Commission on Teacher Credentialing shall submit biennial reports to the Legislature concerning teacher assignments and misassignments which shall be based, in part, on the annual reports of the county superintendents of schools.

(e)(1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credentialholders.

Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

(2) Commencing July 1, 1989, any certificated person who is required by an administrative superior to accept an assignment for which he or she has no legal authorization shall, after exhausting any existing local remedies, notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools shall, within 15 working days, advise the affected certificated person concerning the legality of his or her assignment. There shall be no adverse action taken against a certificated person who files a notification of misassignment with the county superintendent of schools. During the period of the misassignment, the certificated person who files a written notification with the county superintendent of schools shall be exempt from the provisions of Section 45034. If it is determined that a misassignment has taken place, any performance evaluation of the employee under Sections 44660 to 44664, inclusive, in any misassigned subject shall be nullified.

(3) The county superintendent of schools shall notify, through the office of the school district superintendent, any certificated school administrator responsible for the assignment of a certificated person to a position for which he or she has no legal authorization of the misassignment and shall advise him or her to correct the assignment within 30 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignment if the certificated school administrator has not corrected the misassignment within 30 days of the initial notification, or if the certificated school administrator has not described, in writing, within the 30-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(4) The county superintendent of schools shall notify any superintendent of a school district in which 5 percent or more of all certificated teachers in the secondary schools are found to be misassigned of the misassignments and shall advise him or her to correct the misassignments within 120 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignments if the school district superintendent has not corrected the misassignments within 120 days of the initial notification, or if the school district superintendent of schools has not described, in writing, within the 120-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(f) An applicant for a professional administrative service credential shall be required to demonstrate knowledge of existing credentialing laws, including knowledge of assignment authorizations.

(g) The Superintendent * * * shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (c) to the Legislature. The Legislature may hold, within a reasonable period after receipt of the summary, public hearings on pupil access to teachers and to related statutory provisions. The Legislature may also assign one or more of the standing committees or a joint committee, to determine the following:

(1) The effectiveness of the reviews required pursuant to this section.

(2) The extent, if any, of vacancies and misassignments, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126.

(3) The need, if any, to assist schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to eliminate vacancies and misassignments.

SEC. 10. Section 48642 of the Education Code is amended to read:

48642. * * * Sections 48630, 48631, 48632, 48633, 48634, 48635, 48636, 48637, 48637.1, 48637.2, 48637.3, 48638, and 48639, and this section, shall become inoperative on July 1, 2005, and, as of January 1, 2006, are repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which * * * these sections become inoperative and are repealed.

SEC. 11. Section 49436 of the Education Code is amended to read:

49436. * * * The department * * * shall monitor the implementation of Sections 49431, 49433, 49433.5, 49433.7, and 49433.9 and shall report to the Legislature by May 1, 2005, * * * its evaluation of all of the following:

(1) The fiscal impact of the policies and standards developed by school districts.

(2) The effect of this article upon school districts and pupils, including * * * an assessment of pupil responses and related findings.

(3) Recommendations for improvements or additions.

(4) The resulting changes in food and beverage sales at schools.

* * *

SEC. 12. Section 52055.640 of the Education Code is amended to read:

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent * * * that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district. Commencing with the 2004–05 fiscal year, for a school district with a school initially applying to participate in the program on or after July 1, 2004, the report shall include whether at least 80 percent of the teachers assigned to the school are credentialed and the number of classes in which 20 percent or more pupils are English learners and assigned to teachers who do not possess a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or have not completed training pursuant to Section 44253.10, or are not otherwise authorized by statute to be assigned to those classes. This paragraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners. For a school district that initially applies to participate in the High Priority Schools Grant Program during the 2004–05 fiscal year, or any fiscal year thereafter, the definition of "sufficient textbooks or instructional materials" contained in subdivision (c) of Section 60119 applies to this paragraph.

(4) The number of parents and guardians presently involved at each participating school-site as compared to the number participating at the beginning of the program.

(5) The number of pupils attending after-school, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing and Reporting Program and the writing sample that is part of that program.

(2) The results of the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

SEC. 13. Section 52295.35 of the Education Code, as added by Section 9 of Chapter 681 of the Statutes of 2004, is amended to read:

52295.35. (a) Applicants within each of the 11 California Technology Assistance Project regions shall compete against other applicants from that region. The amount of funding for grants available to each region shall be determined based upon the proportionate enrollment of pupils in grades 4 to 8, inclusive, in eligible schools from that region, but a region shall not be allocated less than * * * five hundred thousand dollars ($500,000) or 2 percent of available grant funds, whichever amount is greater.

(b) If a region is allocated more funding than is needed for its eligible applicants, the Superintendent * * * may develop a policy to ensure that all funding is distributed to other regions for their eligible but unfunded applicants.

(c) Grants shall be awarded to an eligible school district for the eligible school or schools specified in the program application. All grant funds shall be spent in a manner consistent with the local educational agency technology plan, pursuant to subdivision (a) of Section 51871.5 and subdivision (a) of Section 2414 of Part D of Title II of the No Child Left Behind Act of 2001 (Public Law 107-110), and the program application and shall be used for the eligible school or schools specified in the approved application.

(d) The initial one-time implementation grant for a school selected to receive a grant shall be calculated based upon three hundred dollars ($300) per pupil for pupils in grades 4 to 8, inclusive. Upon recommendation from the department, the State Board of Education may adopt criteria that establish fixed minimum grant levels for a small school.

(e) Subject to availability of federal funding appropriated for competitive grants under Part D of Title II of the federal No Child Left Behind Act of 2001 (Public Law 107-110), any grant recipient that successfully completes the initial grant shall receive an additional one-time grant of forty-five dollars ($45) per pupil in grades 4 to 8, inclusive, at the school or schools selected for funding. The purpose of this funding shall be to continue implementation of the grant recipients' approved technology plan in a manner consistent with the requirements of Part D of Title II of the federal No Child Left Behind Act of 2001 (Public Law 107-110), including plans to sustain the use of technology as a tool in improving teaching and pupil academic achievement once the grant period ends.

(f) This section shall become operative July 1, 2005.

SEC. 14. Section 56836.165 of the Education Code is amended to read:

56836.165. (a) For the 2004–05 fiscal year and each fiscal year thereafter, the Superintendent shall calculate for each special education local plan area an amount based on (1) the number of children and youth residing in foster family homes and foster family agencies, (2) the licensed capacity of group homes licensed by the State Department of Social Services, and (3) the number of children and youth ages 3 through 21 referred by the State Department of Developmental Services who are residing in skilled nursing facilities or intermediate care facilities licensed by the State Department of Health Services and the number of youth ages 18 through 21 referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services.

(b) The department shall assign each facility described in paragraphs (1), (2), and (3) of subdivision (a) a severity rating. The severity ratings shall be on a scale from 1 to 14. Foster family homes shall be assigned a severity rating of 1. Foster family agencies shall be assigned a severity rating of 2. Facilities described in paragraph (2) of subdivision (a) shall be assigned the same severity rating as its State Department of Social Services rate classification level. For facilities described in paragraph (3) of subdivision (a), skilled nursing facilities shall be assigned a severity rating of 14, intermediate care facilities shall be assigned a severity rating of 11, and community care facilities shall be assigned a severity rating of 8.

(c)(1) The department shall establish a "bed allowance" for each severity level. For the 2004–05 fiscal year, the bed allowance shall be calculated as described in paragraph (2). For the 2005–06 fiscal year and each fiscal year thereafter, the department shall increase the bed allowance by the inflation adjustment computed pursuant to Section 42238.1. The department shall not establish a bed allowance for any facility defined in paragraphs (2) and (3) of subdivision (a) if it is not licensed by the State Department of Social Services or the State Department of Health Services.

(2)(A) The bed allowance for severity level 1 shall be five hundred two dollars ($502).

(B) The bed allowance for severity level 2 shall be six hundred ten dollars ($610).

(C) The bed allowance for severity level 3 shall be one thousand four hundred thirty-four dollars ($1,434).

(D) The bed allowance for severity level 4 shall be one thousand six hundred forty-nine dollars ($1,649).

(E) The bed allowance for severity level 5 shall be one thousand eight hundred sixty-five dollars ($1,865).

(F) The bed allowance for severity level 6 shall be two thousand eighty dollars ($2,080).

(G) The bed allowance for severity level 7 shall be two thousand two hundred ninety-five dollars ($2,295).

(H) The bed allowance for severity level 8 shall be two thousand five hundred ten dollars ($2,510).

(I) The bed allowance for severity level 9 shall be five thousand four hundred fifty-one dollars ($5,451).

(J) The bed allowance for severity level 10 shall be five thousand eight hundred eighty-one dollars ($5,881).

(K) The bed allowance for severity level 11 shall be nine thousand four hundred sixty-seven dollars ($9,467).

(L) The bed allowance for severity level 12 shall be thirteen thousand four hundred eighty-three dollars ($13,483).

(M) The bed allowance for severity level 13 shall be fourteen thousand three hundred forty-three dollars ($14,343).

(N) The bed allowance for severity level 14 shall be twenty thousand eighty-one dollars ($20,081).

(d)(1) For each fiscal year, the department shall calculate an out-of-home care funding amount for each special education local plan area as the sum of amounts computed pursuant to paragraphs (2), (3), and (4). The State Department of Social Services and the State Department of Developmental Services shall provide the State Department of Education with the residential counts identified in paragraphs (2), (3), and (4).

(2) The number of children and youth residing on April 1 in foster family homes and foster family agencies located in each special education local plan area times the appropriate bed allowance.

(3) The capacity on April 1 of each group home licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

(4) The number on April 1 of children and youth (A) ages 3 through 21 referred by the State Department of Developmental Services who are residing in skilled nursing facilities and intermediate care facilities licensed by the State Department of Health Services located in each special education local plan area times the appropriate bed allowance, and (B) ages 18 through 21 referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

(e) In determining the amount of the first principal apportionment for a fiscal year pursuant to Section 41332, the Superintendent shall continue to apportion funds from Section A of the State School Fund to each special education local plan area equal to the amount apportioned at the advance apportionment pursuant to Section 41330 for that fiscal year.

SEC. 15. Section 60119 of the Education Code is amended to read:

60119. (a) In order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1)(A) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, or both, that are aligned to the content standards adopted pursuant to Section 60605 in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History–social science.

(iv) English/language arts, including the English language development component of an adopted program.

(B) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack, year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004–05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(C) As part of the hearing required pursuant to this section, the governing board shall also make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials, or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(2)(A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or

instructional materials, or both, within two months of the beginning of the school year in which the determination is made.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c)(1) For purposes of this section, "sufficient textbooks or instructional materials" means that each pupil, including English learners, has a standards-aligned textbook or instructional materials, or both, to use in class and to take home * * *. This paragraph does not require two sets of textbooks or instructional materials for each pupil.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

(d) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent * * * determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

SEC. 16. Item 6110–197–0890 of Section 2.00 of the Budget Act of 2004 is amended to read:

6110-197-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, 21st Century Community Learning Centers Program..... 162,757,000

Schedule:

(1) 30.10.080-Special Program, Child Development, 21st Century Community Learning Centers Program..... 162,757,000

Provisions:

1. (a) It is the intent of the Legislature that the department give significant weight in rating applications, reallocations of available funding and in approving use of grant carryover amounts to the level of student participation and cost per student served. Approval of use of carryover funds from year to year for programs receiving grants shall ensure that additional participation be required so as to not increase the cost per student served in the fiscal year in which grant funds are expended. The department shall also track cost per student planned versus actually achieved and actively ensure that each grant maximizes student participation in relation to the level of the annual grant or shall reduce grant amounts accordingly in subsequent fiscal years.

(b) The department shall provide an annual report to the Legislature and Department of Finance by September 1 of each year that identifies by cohort for the previous fiscal year each high school program funded, the amount of the annual grant and actual funds expended, the numbers of students served and planned to be served, and the average cost per student per day. If the average cost per student per day exceeds $10 per day, the department shall provide specific reasons why the costs are justified and cannot be reduced. In calculating cost per student per day, the department shall not count attendance unless the student is under the direct supervision of after school program staff funded through the grant. Additionally, the department shall calculate cost per day on the basis of the equivalent of a three-hour day for 180 days per school year. The department shall also identify for each program, as applicable, if the attendance of students is restricted to any particular subgroup of students at the school in which the program is located. If such restrictions exist, the department shall provide an explanation of the circumstances and necessity therefor.

2. The State Department of Education (SDE) shall provide a report to the Department of Finance (DOF), the budget committees of each house of the Legislature, and the Legislative Analyst's Office (LAO) by October 15, 2004, on the requests and awards of direct grants pursuant to Article 22.6 (commencing with Section 8484.7) of Chapter 2 of Part 6 of the Education Code, the 21st Century Community Learning Centers Program. The report shall include, but not be limited to, the purposes of the direct grants awarded, the amount requested and the subsequent awards received. The report shall also include the number of applications and awards, both core and direct grants, categorized by public and private high schools, then by school type (elementary, middle, or junior high schools) as well as information identifying those grantees that have been awarded funding through both the state-funded and the federally funded program. In addition, SDE shall report to DOF, the budget committees of each house of the Legislature, and the LAO by May 1, 2005, on the effectiveness of 21st Century Community Learning Centers Program operated by private schools.

3. The provisions of this item shall become inoperative in the event federal funds are not made available for this purpose. It is the intent of the Legislature that the provisions of this item not be considered a precedent for General Fund augmentation of either this state-administered, federally funded program or any state-funded before or after school program.

4. (a) Of the amount appropriated in this item, $60,410,000 is new ongoing federal 21st Century Community Learning Centers Program funds, $782,000 is one-time reallocated federal funds, and $608,000 is one-time federal carryover funds. Of the ongoing funds, $5,000,000 shall be used for high school grants, and $47,977,000 shall be used for elementary, middle, and junior high school grants, with priority placed on increasing the number of slots available for 11- and 12-year-olds and their eligible younger siblings in order to accommodate them in after school programs rather than subsidized child care programs pursuant to Section 8263.4 of the Education Code.

(b) Notwithstanding any other provision of law, the Superintendent of Public Instruction may, upon request by a program that is earning the full grant amount, waive the funding caps for core grants for elementary, middle, and junior high schools to enable those programs to create additional slots for 11- and 12-year-old pupils and their eligible younger siblings pursuant to subdivision (a).

(c) Of the funds remaining in subdivision (a) after the allocations pursuant to that subdivision, $2,118,000 shall be for technical assistance grants, $5,195,000 shall be for access grants, and $1,510,000 shall be for literacy grants.

5. (a) Of the amount appropriated in this item, $25,430,000 is available on a one-time basis, of which $488,000 is one-time federal reallocated funds, and the remaining $24,942,000 is carryover of program savings. $20,000,000 of these funds shall be expended in priority order as follows, to: (1) increase core grant caps for those programs that are at or above their maximum amount to provide additional slots for 11- and 12-year-olds and their eligible younger siblings; (2) expand existing grants to allow programs to offer summer, vacation, and intersession programs thus increasing the number of program days of operation, and (3) increase core grant caps for programs above their maximum amount or with waiting lists. Notwithstanding any other provision of law, the Superintendent of Public Instruction may waive the caps on core grants for these purposes.

(b) The remainder of these funds shall be available on a one-time basis to programs that were allocated funding from the appropriation in this item in the 2002 Budget Act (Ch. 379, Stats. 2002) and in the 2003 Budget Act (Ch. 157, Stats. 2003). Funds shall be available for training, standards-aligned materials, and other allowable one-time costs. The State Department of Education shall provide a report to the Legislature and the Department of Finance by December 1, 2005, identifying how these funds and funds expended pursuant to subdivision (c) were allocated and expended.

(c) Notwithstanding subdivisions (a) and (b), any recipient of a grant award from these funds during the 2004–05 fiscal year may use those awarded funds for any of the purposes in subdivision (b), if the recipient submits documentation as part of its expenditure report that reasonably justifies to the State Department of Education that, subsequent to the grant award, it became impractical or no longer feasible to fully earn or expend those funds for the purpose for which those funds were originally granted to the recipient.

SEC. 17. Section 22 of Chapter 900 of the Statutes of 2004 is amended to read:

Sec. 22. (a) The sum of nine hundred fifteen million four hundred forty-one thousand dollars ($915,441,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(1) The following amounts are appropriated for the 2005–06 fiscal year:

(A) The sum of five million nine hundred thirty-three thousand dollars ($5,933,000) to the State Department of Education for apprenticeship programs to be expended consistent with the requirements specified in Item 6110–103–0001 of Section 2.00 of the Budget Act of 2004.

(B) The sum of eighty-five million eight hundred sixty-six thousand dollars ($85,866,000) to the State Department of Education for supplemental instruction to be expended consistent with the requirements specified in Item 6110–104–0001 of Section 2.00 of the Budget Act of 2004. Of the amount appropriated by this subparagraph, forty-eight million six hundred fifty-two thousand dollars ($48,652,000) shall be expended consistent with Schedule (1) of Item 6110–104–0001 of Section 2.00 of the Budget Act of 2004, eleven million seven hundred forty-nine thousand dollars ($11,749,000) shall be expended consistent with Schedule (2) of that item, four million four hundred sixty-nine thousand dollars ($4,469,000) shall be expended consistent with Schedule (3) of that item, and twenty million nine hundred ninety-six thousand dollars ($20,996,000) shall be expended consistent with Schedule (4) of that item.

(C) The sum of thirty-seven million fifty-one thousand dollars ($37,051,000) to the State Department of Education for regional occupational centers and programs to be expended consistent with the requirements specified in Schedule (1) of Item 6110–105–0001 of Section 2.00 of the Budget Act of 2004.

(D) The sum of fifty million one hundred three thousand dollars ($50,103,000) to the State Department of Education for home-to-school transportation to be expended consistent with the requirements specified in Schedule (1) of Item 6110–111–0001 of Section 2.00 of the Budget Act of 2004.

(E) The sum of four million ninety-two thousand dollars ($4,092,000) to the State Department of Education for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110–124–0001 of Section 2.00 of the Budget Act of 2004.

(F) The sum of ninety-five million three hundred ninety-seven thousand dollars ($95,397,000) to the State Department of Education for Targeted Instructional Improvement Grant Program to be expended consistent with the requirements specified in Item 6110–132–0001 of Section 2.00 of the Budget Act of 2004.

(G) The sum of forty-two million nine hundred fifty-nine thousand dollars ($42,959,000) to the State Department of Education for adult education to be expended consistent with the requirements specified in Schedule (1) of Item 6110–156–0001 of Section 2.00 of the Budget Act of 2004.

(H) The sum of four million five hundred fifty-eight thousand dollars ($4,558,000) to the State Department of Education for community day schools to be expended consistent with the requirements specified in Item 6110–190–0001 of Section 2.00 of the Budget Act of 2004.

(I) The sum of five million two hundred ninety-eight thousand dollars ($5,298,000) to the State Department of Education for categorical block grants for charter schools to be expended consistent with the requirements specified in Item 6110–211–0001 of Section 2.00 of the Budget Act of 2004.

(J) The sum of thirty-six million eight hundred ninety-four thousand dollars ($36,894,000) to the State Department of Education for the School Safety Block Grant to be expended consistent with the requirements specified in Schedule (1) of Item 6110–228–0001 of Section 2.00 of the Budget Act of 2004.

(K) The sum of two hundred million dollars ($200,000,000) to the Board of Governors of the California Community Colleges for apportionments, to be expended in accordance with the requirements specified for Schedule (1) of Item 6870–101–0001 of Section 2.00 of the Budget Act of 2004.

(2) The sum of one hundred nine million nine hundred fourteen thousand dollars ($109,914,000) is appropriated for the 2004–05 fiscal year to the Superintendent of Public Instruction for the purposes of Section 42238.44 of the Education Code, to be allocated to school districts on a pro rata basis.

(3) The following amounts are appropriated for the 2003–04 fiscal year:

(A) The sum of twelve million six hundred four thousand dollars ($12,604,000) to the State Department of Education for transfer to the State School Deferred Maintenance Fund to be available for funding applications received by the Department of General Services, Office of Public School Construction from school districts for deferred maintenance projects pursuant to Section 17584 of the Education Code.

(B) The sum of one hundred thirty-eight million dollars ($138,000,000) to the State Department of Education for transfer to the Instructional Materials Fund. The funds appropriated pursuant to this subparagraph shall be apportioned to school districts on the basis of an equal amount per pupil enrolled in schools in decile 1 or 2 of the Academic Performance Index (API), as ranked based on the 2003 base API score pursuant to Section 52056 of the Education Code. The funds apportioned pursuant to this subparagraph shall only be used to purchase instructional materials for schools in decile 1 or 2 that are aligned to the content standards adopted pursuant to Section 60605 of the Education Code. For purposes of this subparagraph, enrollment shall be based on the number of pupils reported for purposes of the 2003 base API pursuant to Section 52052 of the Education Code.

(C) The sum of fifty-eight million three hundred ninety-six thousand dollars ($58,396,000) to the Controller to pay for prior year state obligations for education mandate claims and interest. The Controller shall use the funds to pay for the oldest claims of those no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. No payments shall be made from these funds on any claims for the Standardized Testing and Reporting (STAR) Program, schoolsite councils, Brown Act reform, School Bus Safety II, or the removal of chemicals.

(D) The sum of twenty-eight million three hundred seventy-six thousand dollars ($28,376,000) to the Board of Governors of the California Community Colleges to provide one-time funding to districts for scheduled maintenance, special repairs, instructional materials, and library materials replacement. These funds shall be expended for the purposes of and be subject to the conditions of expenditures pursuant to Schedule (24.5) of Item 6870–101–0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subparagraphs (A) to (J), inclusive, of paragraph (1) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2005–06 fiscal year.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (K) of paragraph (1) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2005–06 fiscal year.

(d) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (2) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 2004–05 fiscal year and be included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2004–05 fiscal year.

(e) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by paragraph (3) of subdivision (a) shall be

deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

(f) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (F) of paragraph (3) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

SEC. 18. Section 23 of Chapter 900 of the Statutes of 2004 is amended to read:

Sec. 23. (a) The sum of twenty million two hundred thousand dollars ($20,200,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(1) The sum of five million dollars ($5,000,000) to the State Department of Education for transfer to the State Instructional Materials Fund for purposes of acquiring instructional materials for school districts pursuant to subdivision (i) of Section 1240 of the Education Code.

(2) The sum of fifteen million dollars ($15,000,000) to the State Department of Education for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts pursuant to subparagraph (G) of paragraph (1) of subdivision (a) of Section 42127.6 of the Education Code, subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 44258.9 of the Education Code, and paragraph (4) of subdivision (e) of Section 44258.9 of the Education Code, and to conduct and report on site visits pursuant to paragraph (2) of subdivision (c) of Section 1240 of the Education Code, and oversee the compliance of schools with instructional materials sufficiency requirements as provided in paragraphs (2) to (4), inclusive, of subdivision (i) of Section 1240 of the Education Code. Funds appropriated in this paragraph shall be allocated annually to county offices of education at the rate of three thousand dollars ($3,000) for each school in the county ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056 of the Education Code, based on the 2003 base Academic Performance Index score for each school, provided that the annual allocation for each county shall be a minimum of twenty thousand dollars ($20,000). If there are insufficient funds in any year to make the allocations required by this paragraph, the department shall allocate funding in proportion to the number of sites in each county. County offices shall contract with another county office or independent auditor for any work funded by this paragraph that is associated with a school operated by that county office.

(3) The sum of two hundred thousand dollars ($200,000) to the State Department of Education to implement this act.

(b) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (2) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year. Funds appropriated by this section shall be available for transfer or encumbrance for three fiscal years, beginning in the 2004–05 fiscal year.

SEC. 19. The sum of one million two hundred thousand dollars ($1,200,000) is appropriated from the Donated Food Revolving Fund for support of the State Department of Education, for the purposes of Program 30.50, Donated Food Distribution.

SEC. 20. 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.

SEC. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the educational programs affected by this act are properly implemented, it is necessary that this act take effect immediately.

HORSE RACING—WAGERS—REGULATIONS

CHAPTER 119

A.B. No. 834

AN ACT to amend Sections 19412, 19549.6, and 19610.8 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 25, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 834, Jones. Horse racing.

Existing law defines various types of parimutuel pools, as specified.

This bill would permit harness racing results to be included in proposition parimutuel pool wagers.

Existing law requires the California Horse Racing Board to allocate racing weeks as it deems appropriate, while generally limiting harness racing in the northern zone to 25 weeks per year. Existing law provides a separate general limitation on racing by each fair of 14 days, or 3 weeks in certain circumstances. However, existing law provides that, notwithstanding these general limitations, the board may allocate additional weeks of harness racing to a lessee of the California Exposition and State Fair in Sacramento to be raced at the California Exposition and State Fair in Sacramento.

This bill would authorize the board to allocate these additional weeks of harness racing to the California Exposition and State Fair in Sacramento or to its lessee, to be raced at the California Exposition and State Fair in Sacramento.

Existing law permits the board, upon the request of the association or fair accepting the wager, and the organization of participating horsemen and horsewomen, to set the percentage deducted from the parimutuel pool for any new wager introduced after January 1, 2004, as specified, to be distributed as specified.

This bill would include proposition wagers with any new wager introduced for which the board sets the percentage deducted, and would prescribe an alternate distribution scheme for quarter horse racing commissions and purses.

Under existing law, revenues distributed to the state as license fees from horse racing are required to be distributed in the Fair and Exposition fund and are continuously appropriated to the Department of Food and Agriculture for various regulatory and general governmental purposes.

By providing for state license fees of 3% for new types of wagers that otherwise would be subject to lower state license fees as exotic wagers, this bill would increase the amount of continuously appropriated license fees, thereby making an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SixTen and Associates
Mandate Reimbursement Services

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Fax: (916) 564-6103

December 14, 2007

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

Re: Test Claim of San Diego County Office of Education
and the Sweetwater Union High School District
Statutes of 2006, Chapter 704
Williams Case Implementation II

Dear Ms. Higashi:

Enclosed is the original and seven copies of the above referenced test claim.

I have been appointed by the test claimants as their representative for this test claim. The test claimants request that all correspondence originating from your office and documents subject to service by other parties be directed to me, with a copy to:

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7399

Dianne L. Russo, Chief Fiscal Officer
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896

This test claim is filed with the endorsement of the Education Mandated Cost Network, so Robert Miyashiro, EMCN Consultant, and Michael Johnston, EMCN Chair, should be included as interested parties for future correspondence. I have already provided them copies of the test claim material.

The following state agencies may have an interest in this test claim:

State Department of Education
State Allocation Board
Office of Public School Construction

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education
Dianne L. Russo, Chief Fiscal Officer
Sweetwater Union High School District
Robert Miyashiro, School Services of California

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

1. TEST CLAIM TITLE

Williams Case Implementation II
Supplement to:
Williams Case Implementation (05-TC-04) 07-TC-06

For CSM Use Only

Filing Date: RECEIVED
DEC 14 2007
COMMISSION ON STATE MANDATES

Test Claim #:

2. CLAIMANT INFORMATION

San Diego County Office of Education
Lora Duzyk
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Sweetwater Union High School District
Dianne L. Russo
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Chula Vista, CA 91911-2896
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E-Mail: dianne.russo@suhsd.k12.ca.us

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen
President
SixTen and Associates
3841 N. Freeway Blvd.; Suite 170
Sacramento, CA 95834
Phone: (916) 565-6104
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4.TEST CLAIM STATUTES OR EXECUTIVE ORDERS

STATUTES

Statutes of 2006, Chapter 704 (AB 607), effective January 1, 2007

EDUCATION CODE SECTIONS

1240 1242 1242.5 17002 17592.72 35186 60119

REGULATIONS

Title 2, Sections 1859.300 through 1859.330
Register 2007, No. 27

RELATED EXECUTIVE ORDERS

Emergency Repairs Program
-Application Submittal Requirements Checklist
-Grant Request replaces *Application For Reimbursement and Expenditure Report,*
Form SAB 61-03 (revised 01/07)
-Expenditure Report
Form SAB 61-04 (new 01/07)

School Facilities Needs Assessment Grant Program

-Online School Facilities Needs Assessment Submittal [Web-based} Program replaces
Certificate of Eligibility
Needs Assessment Report Worksheet
Progress Report Survey

Facility Inspection Tool (FIT) (new 06/07)

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, 7, and 8 are attached as follows:

5. Written Narrative: pages 1 to 29

6. Declarations: See Exhibit A

7. Documentation: See Exhibits B to D

8. Claim Certification: Located after page 29

5. WRITTEN NARRATIVE

First Test Claim

On September 16, 2005, the San Diego County Office of Education and the Sweetwater Union High School District submitted a test claim entitled "Williams Case Implementation." By letter dated October 3, 2005, the Commission on State Mandates accepted the test claim. That test claim (05-TC-04) alleges mandated costs reimbursable by the state for school districts and county offices of education ("school districts") to implement the legislation which resulted from the settlement of the "Williams" court case.

Second Test Claim

This second test claim supplements the prior test claim for changes and additions to statutes, regulations, and executive orders. The statute, Education Code sections, Title 2 regulations, and the executive orders of the Office of Public School Construction and State Allocation Board, referenced in this test claim result in school districts and county offices of education incurring increased costs mandated by the state, as defined in Government Code Section 17514, by creating new state-mandated duties related to the uniquely governmental function of providing services to the public and these statutes apply to school districts and do not apply generally to all residents and entities in the state. County offices of education (the County Superintendent of Schools) incur costs mandated by the state in two capacities: for the required monitoring and oversight of school districts within the jurisdiction of the county offices of education which implement the *Williams* Case, as well as in their capacity as a local education agency which operates schools as a "school district."

PART A. ACTIVITIES AND COSTS

SECTION 1. STATUTORY MANDATES

Statutes of 2006, Chapter 704, Assembly Bill 607

Statutes of 2006, Chapter 704, Assembly Bill 607, effective January 1, 2007, 2007, makes the following changes:

Education Code Section	Action	
1240	amended	
1242	added	
1242.5	added	
17002	amended	
17076.10	amended	(unrelated subject matter)
17592.72	amended	
35186	amended	
60119	amended	

and makes an appropriation therefor.

Legislative Digest

(1) Existing law requires a county superintendent of schools, among other things, to visit and examine each school in the county to observe its operation and learn of its problems. Existing law requires the county superintendent to annually present a report to the governing board of each school district under his or her jurisdiction, and to the board of supervisors of the county, describing the state of county schools ranked in

deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API).

This statute:

Requires the county superintendent to submit the annual report in November at a regularly scheduled meeting of the governing board. The report must include certain determinations for each school including teacher misassignments and teacher vacancies. The report requires the county superintendent, or his or designee, to use a standardized template unless the superintendent already reports such information.

Requires, commencing with the 2006-07 fiscal year, that certain funds be appropriated pursuant to the Budget Act of 2006 to county offices of education for site visits for elementary, middle or junior, and high schools, as specified. This statute provides additional allocations to county offices of education responsible for visiting more than 150 schoolsites. The statute sets $10,000 as the minimum amount to be allocated to county offices of education.

Requires the State Department of Education to review the actual costs of 2005-06 fiscal year site visits conducted. If the department determines that a county office of education did not expend the funds allocated, the amount that exceeds the amount spent shall revert to a certain fund which would be available to cover specified extraordinary costs incurred by the county offices of education. It would require the department to allocate the funds to county offices of education by June 30, 2007.

(3) Existing law establishes in the State Treasury the School Facilities Emergency Repair Account, administered by the State Allocation Board, for the purpose of reimbursing school districts with schools ranked in deciles 1 to 3, inclusive, on the API,

as specified, for emergency facility repairs, as provided.

This statute requires that, commencing with the 2006-07 fiscal year, the money in the account is also available to fund grants for certain listed necessary repairs that meet specific conditions. The statute requires the board establish a process for schools to apply for the grants and provide certification of the completion of the projects. It also requires that the board post the grant application form on its Internet Web site.

(4) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or teacher misassignments. Existing law requires a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, that school facilities must be clean, safe, and in good repair, and that there should be no teacher vacancies or misassignments, as defined. Existing law also requires the notice to inform parents of the location to obtain a form to file a complaint in case of a shortage of textbooks. Existing law authorizes anonymous complaints. If a complainant identifies himself or herself, the complainant is entitled to a response if he or she requests one.

This statute requires that, if certain conditions are met, the report and response, if requested, are written in English and the primary language in which the complaint was filed, thereby establishing a state-mandated local program.

(6) Requires the remaining unencumbered balance of certain funds appropriated to

county offices of education for certain reviews and monitoring of schools and to conduct and report on site visits, as specified, to remain available for expenditure through June 30, 2008, for purposes of certain site visit reports on the state of certain schools, thereby making an appropriation.

Activities and Costs

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (A)

Education Code Section 1240 (c)(1) requires the county superintendent of schools to visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

Education Code Section 1240, subdivision (c)(2)(A), required the county superintendent of schools to annually submit a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county. As amended by Statutes of 2006, Chapter 704, requires that for fiscal years 2004-05 to 2006-07, the report shall be submitted at a regularly scheduled November board meeting.

Education Code Section 1240, subdivision (c)(2)(A), required that the report must describe the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, of his or her observations while visiting

the schools. As amended, the report must include his or her determinations for each school and the reasons for the determinations, regarding: sufficient textbooks, school facility conditions, the accuracy of data reported on the school accountability report card with respect to sufficient textbooks, and the safety, cleanliness, and adequacy of school facilities, including good repair. Also, as a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in renumbered paragraph (I) [formerly paragraph (e)] and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (B)

Education Code Section 1240, subdivision (c) (2) (B), as amended, requires commencing with the 2007-08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, must annually submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report must include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (I) and teacher

misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include any schools determined by the department to meet either of the following:

(i) The school meets all of the following criteria:

(I) Does not have a valid base API score for 2006.

(II) Is operating in fiscal year 2007-08 and was operating in fiscal year 2006-07 during the Standardized Testing and Reporting (STAR) Program testing period.

(III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.

(ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (C)

Education Code Section 1240, subdivision (c) (2) (C), as amended, requires the department to estimate an API score for any school that does not have a valid base API score and was operating in fiscal 2006-07 which did not have a valid base score in fiscal year 2005, by using available testing scores and any weighting or corrective

factors it deems appropriate. The department shall post the API scores on its Internet Web site by May 1.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (D)

Education Code Section 1240, subdivision (c) (2) (D), as amended, excludes from schools ranked in deciles 1 to 3, on the 2006 base API, schools operated by county offices of education pursuant to Educational Code Section 56140, as determined by the department.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (E)

Education Code Section 1240, subdivision (c) (2) (E) (i), as amended, requires that commencing with fiscal year 2010-11 and every third year thereafter, the state superintendent must identify a list of schools ranked in deciles 1 to 3, inclusive, of the API, for which the county superintendent shall annually submit a report at a regularly scheduled November board meeting. Item (ii) requires the list of decile 1-3 schools to be based on the API for the preceding year. Item (iii) requires, as a condition for the receipt of funds, the annual report must include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (G)

Education Code Section 1240, subdivision (c) (2) (G) [previously subparagraph (D)], required the county superintendent to report the results of the visits and reviews conducted that quarter to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements. As amended, that report must include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances including the sufficiency of textbooks, condition of school facilities, and the accuracy of data reported on the school accountability report card regarding the sufficiency of textbooks, and the safety, cleanliness, and adequacy of school facilities, including good repair, and teacher misassignments and teacher vacancies. If the county superintendent or his or her designee does not conduct any visits or reviews that quarter, the quarterly report shall report the fact.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (K)

Education Code Section 1240, subdivision (c) (2) (K), as amended, requires that if the county superintendent determines that the condition of a school facility poses an emergency or urgent threat to the health and safety of pupils or staff or is not in good repair, the county superintendent is authorized to:

(i) Return to the school to verify repairs; or

(ii) Prepare a report that identifies and documents the instances of non-compliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent's visit or, for major projects, has not

evidenced that the repairs will be made in a timely manner. The report may be provided to the governing board of the school district, if so, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on its Internet Web site, and the report shall be removed from the Web site when the county superintendent verifies that the repairs have been completed.

Education Code Section 1240, subdivision (e)

Education Code Section 1240, subdivision (e) required the county superintendent of schools, or his or her designee, to present an annual report regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, negative interim certification, or one which is determined at any time to be in a position of fiscal uncertainty. As amended, this report must be presented on or before August 15.

Education Code Section 1240, subdivision (i)

Education Code Section 1240, subdivision (i), required the county superintendent to enforce the use of state textbooks and instructional materials and to specifically review compliance at decile 1-3 schools within the county superintendent's jurisdiction. Superintendents in counties with more than 200 decile 1-3 schools were allowed to utilize a combination of visits and written surveys to accomplish this duty.

As amended, subparagraph (3) (B), requires that if a county superintendent surveys teachers at a school where he or she has found sufficient textbooks and instructional materials for the previous two consecutive years, and determines that the

school does not have sufficient textbooks or instructional materials, the county superintendent shall, within 10 business days, provide a copy to the school district of the insufficiency report.

Subparagraph (4) (B) required the county superintendent to provide a report to the school district if the superintendent determines that the district does not have sufficient textbooks and materials. As amended, this report must be provided within 10 business days.

Subparagraph (4) (D) required the State Department of Education to report to the State Board of Education when a request was received from a county superintendent for the state department to purchase textbooks for a school district. As amended, the county superintendent no longer needs the consent of the state board before requesting the department to purchase the necessary instructional materials. Furthermore, the department no longer needs the state board's consent to purchase instructional materials. The department, rather than the state board, shall issue a public statement indicating that the district superintendent and the governing board of the school district failed to provide sufficient instructional materials at the first regularly scheduled meeting of the state board occurring immediately after the department receives the county superintendent's request.

Education Code Section 1242

Education Code Section 1242, subdivision (a), as added by Statutes of 2006, Chapter 704, requires county offices of education, commencing with the 2006-07 fiscal year, to allocate funds appropriated pursuant to Item 6110-266-0001 of Section 2.0 of

Chapter 47 of the Statutes of 2006 (Budget Act of 2006) for site visits as follows:

(1) Two thousand five hundred dollars ($2,500) for each elementary school.

(2) Three thousand five hundred dollars ($3,500) for each middle or junior high school.

(3) Five thousand dollars ($5,000) for each high school.

Subdivision (b), as added, requires county offices of education to receive, in addition to the funds described in subdivision (a), additional funding for sites whose enrollment in the prior year is 20 percent greater than the average enrollment of all sites for the prior year as follows:

(1) Two dollars and fifty cents ($2.50) for each pupil that exceeds a total elementary school enrollment of 856 pupils.

(2) Three dollars and fifty cents ($3.50) for each pupil that exceeds a total middle school or junior high school enrollment of 1,427 pupils.

(3) Five dollars ($5.00) for each pupil that exceeds a total high school enrollment of 2,296 pupils.

Subdivision (c), as added, requires that county offices of education that are responsible for visiting more than 150 schoolsites shall receive an additional allocation of one dollar ($1.00) per pupil for the total prior year enrollment of all sites visited.

Subdivision (d), as added, states that the minimum amount of allocation pursuant to this section to county offices of education shall be ten thousand dollars ($10,000).

/

Education Code Section 1242.5

Education Code Section 1242.5, as added by Statutes of 2006, Chapter 704, requires that by March 31, 2007, the Department of Education to review the actual costs of 2005-06 fiscal year site visits conducted pursuant to Section 1240. If the department determines that a county office of education did not expend the funds allocated for this purpose during the 2006-07 fiscal year, the amount that exceeds the amount spent shall revert to the extraordinary cost pool created by Chapter 710 of the Statutes of 2005, and shall be available to cover the extraordinary costs incurred by county offices of education as a result of the reviews conducted pursuant to Section 1240. Based on a determination by the Department of Education jointly with the Department of Finance that it was necessary for a county office of education to incur extraordinary costs to conduct the site visits, funds in the amount necessary to cover these costs shall be allocated to the county office of education by June 30, 2007.

Education Code Section 17002, subdivision (d)

Education Code Section 17002 defines specific terms relating to the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Subdivision (d), paragraph (1), previously defined "good repair" to mean the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an "interim" evaluation instrument as developed by the Office of Public Construction. Statutes of 2006, Chapter 704, amended the subdivision (d) (1) definition to require "good repair" to be determined pursuant to a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the

state board, or a local evaluation instrument that meets the same criteria. In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection and evaluation instrument and local evaluation instruments must at least include the following criteria:

(A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

(B)(i) Mechanical systems, including heating, ventilation, and air conditioning systems, are functional and unobstructed.

(ii) Appear to supply adequate amount of air to all classrooms, work spaces, and facilities.

(iii) Maintain interior temperatures within normally acceptable ranges.

(C) Doors and windows are intact, functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.

(D) Fences, and gates are intact, functional, and free of holes and other conditions that could present a safety hazard to pupils, staff, or others. Locks and other security hardware function as designed.

(E) Interior surfaces, including walls, floors, and ceilings, are free of safety hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of mold or mildew.

(F) Hazardous and flammable materials are stored properly. No evidence of peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or asbestos exposure are evident. There is no apparent evidence of hazardous materials that may pose a threat to the health and safety of pupils or staff.

(G) Structures, including posts, beams, supports for portable classrooms and ramps, and other structural building members appear intact, secure, and functional as designed. Ceilings and floors are not sloping or sagging beyond their intended design. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines structural components.

(H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all emergency equipment and systems appear to be functioning properly. Fire alarm and pull stations are clearly visible. Fire extinguishers are current and placed in all required areas, including every classroom and assembly area. Emergency exits are clearly marked and unobstructed.

(I) Electrical systems, components, and equipment, including switches, junction boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly covered and guarded from pupil access, and appear to be working properly.

(J) Lighting appears to be adequate and working properly. Lights do not flicker, dim, or malfunction, and there is no unusual hum or noise from light fixtures. Exterior lights onsite appear to be working properly.

(K) No visible or odorous indicators of pest or vermin infestation are evident.

(L) Interior and exterior drinking fountains are functional, accessible, and free of leaks. Drinking fountain water pressure is adequate. Fountain water is clear and without unusual taste or odor, and moss, mold, or excessive staining is not evident.

(M)(i) Restrooms and restroom fixtures are functional.

(ii) Appear to be maintained and stocked with supplies regularly.

(iii) Appear to be accessible to pupils during the schoolday.

(iv) Appear to be in compliance with Section 35292.5, relating to cleanliness and maintenance of restrooms.

(N) The sanitary sewer system controls odor as designed, displays no signs of stoppage, backup, or flooding, in the facilities or on school grounds, and appears to be functioning properly.

(O) Roofs, gutters, roof drains, and downspouts appear to be functioning properly and are free of visible damage and evidence of disrepair when observed from the ground inside and outside of the building.

(P) The school grounds do not exhibit signs of drainage problems, such as visible evidence of flooded areas, eroded soil, water damage to asphalt playgrounds or parking areas, or clogged storm drain inlets.

(Q) Playground equipment and exterior fixtures, seating, tables, and equipment are functional and free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(R) School grounds, fields, walkways, and parking lot surfaces are free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(S) Overall cleanliness of the school grounds, buildings, common areas, and individual rooms demonstrates that all areas appear to have been cleaned regularly, and are free of accumulated refuse and unabated graffiti. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each

day that the school is in session.

Section 17002, subdivision (d), paragraph (2), subparagraph (A), as amended, requires that by January 1, 2007, the Office of Public School Construction must develop the school facility inspection and evaluation instrument and instructions for users. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall include a "good, fair," or "poor" rating as developed by Office of Public School Construction, and an overall summary of each school's conditions on a scale of "exemplary," "good, fair," or "poor."

Section 17002, subdivision (d), paragraph (2), subparagraph (B), as amended, requires that by July 1, 2007, the Office of Public School Construction in consultation with county offices of education, shall define objective criteria for determining the overall summary of the conditions of schools.

Section 17002, subdivision (d), paragraph (2), subparagraph (C), as amended, defines "users" as local educational agencies participating in either the Leroy F. Greene State School-building Lease Purchase Law of 1975, the Leroy F. Greene School Facilities Act of 1998, or the District Deferred Maintenance Fund.

Education Code Section 17592.72

Education Code Section 17592.72 determines the allocation of the School Facilities Emergency Repair Account. Subdivision (a), paragraph (1), as amended, establishes the API base for FY 2005-06 funds. Subdivision (a), paragraph (2), as amended, establishes the API base for FY 2006-07 funds, and requires the State Allocation Board to establish a grant application process and to post the grant

application form on its Internet Web site. Subdivision (a), paragraph (3), as amended, states that for subsequent fiscal years, schools shall be eligible for funding based on the Academic Performance Index scores as specified in paragraph (2) of subdivision (c) of Section 1240.

Education Code Section 35186

Education Code Section 35186, subdivision (a), requires school districts to utilize the uniform complaint process provided for by Title 5, California Code of Regulations, Chapter 5.1, commencing with Section 4600. Subdivision (a), paragraph (1), as amended, requires school districts to write the report in English, and, when requested, in the primary language in which the complaint was filed, when 15% or more of students do not have English as their primary language as determined by Education Code Section 48985.

Subdivision (e), paragraph (3), as amended, includes violations relating to public and private school restrooms and their cleanliness, as stated under Education Code Section 35292.5.

Education Code Section 60119

Education Code Section 60119, subdivision (a), paragraph (1), subparagraph (A), requires the school district governing board to conduct a public hearing regarding its determination of whether there are sufficient textbooks and instructional materials for each school in the district. Paragraph (2), subparagraph (A), as amended, requires the governing board resolution for each school in which an insufficiency exists report the percentage of pupils who lack sufficient standards-aligned textbooks or instructional

materials in each subject area and the reasons that each pupil does not have sufficient textbooks and instructional materials.

SECTION 2. REGULATORY MANDATES

Regulations

Title 2, Sections 1859.300 through 1859.330 Register 2007, No. 27

The State Allocation Board adopted Title 2 regulations (Register 2005, No. 45) on November 7, 2005, which certified emergency regulations (Register 2005, No. 22) adopted May 31, 2005, which were the subject of the first test claim. These regulations are located at Title 2, Sections 1859.300 through 1859.330, and are titled "School Facilities Needs Assessment and Emergency Repair Program."

Since then, the Board has adopted additional emergency regulations (Register 2007, No. 27) operative July 2, 2007, to implement the facilities portion of Statutes of 2007, Chapter 704. A Certificate of Compliance must be transmitted to the Office of Administrative Law by December 31, 2007, by the Board to adopt the emergency regulations as permanent regulations.

Executive Orders

Emergency Repairs Program:

-Application Submittal Requirements Checklist

-Grant Request replaces *Application For Reimbursement and Expenditure Report,*

Form SAB 61-03 (revised 01/07)

-Expenditure Report

Form SAB 61-04 (new 01/07)

School Facilities Needs Assessment Grant Program:

-*Online School Facilities Needs Assessment Submittal [Web-based} Program* replaces

Certificate of Eligibility

Needs Assessment Report Worksheet

Progress Report Survey

Facility Inspection Tool (FIT) (new 06/07)

Activities and Costs

Section 1859.302, as amended by the 2007 Register, Number 27, operative July 2, 2007, as an emergency regulation, relating to School Facilities Emergency Repair Account, adds a reference to SAB Form 61-03 and adds a new definition for "grants."

Section 1859.318, as amended, replaces "reimbursement" with "funding" pursuant to Chapter 704, Statutes of 2006, which changes the program to a grant program, and adds Education Code Section 17592.72 as a reference.

Section 1859.320, as amended, adds a reference to SAB Form 61-03 and clarifies the use of this form.

Section 1859.321, as amended, adds at subdivision (b) a reference to SAB Form 61-03 and to Education Code Section 17592.72.

Section 1859.322, as amended, adds a reference to SAB Form 61-04, substitutes grant language for previous reimbursement language, establishes a new project funding priority, and requires local special reserve funds used for repairs to be reimbursed by the grant funds.

Section 1859.323, as amended, additionally requires that to be eligible for grant

funding consideration, the total project cost request on the Form SAB 61-03 must be $5,000 or higher, unless the LEA can justify its request for a lesser amount and adds application documentation preparation and submittal costs, if any, as permissible costs under Regulation Section 1859.323.2 (j).

Section 1859.323.1, as amended, adds grant funding language and clarifies the technical requirements for determination of replacement costs.

Section 1859.323.2, as amended, limits application costs reimbursement to no more than two percent of the total project costs or $5,000, whichever is less.

Section 1859.324, as amended, adds grant funding language and changes the API references.

New Section 1859.324.1, as added, states that after review of a LEA's submitted Form SAB-61-04, projects that require a Grant Adjustment will be presented to the Board for approval and necessary determinations will be made.

Section 1859.326, as amended, regarding the audit of project costs, adds references to the amended regulations regarding return of funds and other technical corrections.

Section 1859.328, as amended, adds a reference to the new mandatory SAB Form 61-04.

Section 1859.329, as amended, adds grant funding language and provisions for grant adjustments.

New Section 1859.330, as added, requires emergency repairs to be completed within 12 months without State Architect approval and 18 months when State Architect

approval is required.

PART B. COST ESTIMATES

SECTION 1. TEST CLAIMANTS' COST ESTIMATE

The actual and/or estimated costs resulting from the mandate exceeds one thousand dollars ($1,000) for San Diego County Office of Education and exceeds one thousand dollars ($1,000) for the Sweetwater Union High School District. See the Declarations in Exhibit A.

SECTION 2. STATEWIDE COST ESTIMATE

The statewide cost estimate for this test claim relies upon the FY 2004-05 data collected for the original Williams Case Implementation (WCI-1) test claim (05-TC-04) for the extrapolation of the estimated FY 2007-08 costs of this test claim. The WCI-I statewide cost estimate was based on voluntary responses to a survey questionnaire prepared by the test claimants. The responses from school districts represented about 10% of the Williams Decile 1-3 enrollment. The responses from county offices of education represented about 23% of the Williams Decile 1-3 enrollment. The responses were extrapolated based on the ratio of the survey statistics to total statewide statistics.

School Districts (K-12)

The FY 2007-08 statewide cost extrapolation for school districts for this test claim is based on the FY 2007-08 estimated cost for the Sweetwater Union High School District to implement the mandated activities, divided by the percentage that the

Sweetwater Union High School District's estimated FY 2004-05 WCI-I Implementation costs represented to the total FY 2004-05 amounts reported by the WCI-I survey, divided by the percentage of school districts responding to the WCI-I survey.

05-TC-04 Williams Case Implementation

K-12 School District Survey Costs Reported for FY 2004-05

	Activity	Total	Sweetwater
1	Preparing to Implement Mandate-Ongoing	$132,310	$21,367
2	Facilities Inspection: One-time	96,938	1,339
3	Instructional Materials-Annual	138,890	14,182
4	Teacher Assignments-Ongoing	84,160	8,828
5	SARC-One-time	109,270	no data
6	Uniform Complaint Procedure-Ongoing	61,460	2,605
7	Financial and Compliance Audits-Ongoing	10,710	513
8	School Facility Needs Assessment-One-time	63,510	no data
9A	Preparing for COE Reviews-Annual	107,820	9,881
9B	Participating in the COE Reviews-Annual	39,900	1,625
9C	Remediation after COE Reviews-Annual	62,710	0
	Statewide Totals (K-12)	$907,678	$60,340

A. The WCI-I total reported survey costs for school districts for FY 2004-05 were $907,678. The estimated amount reported by the test claimant Sweetwater Union High School District for FY 2004-05 was $60,340. Therefore, the Sweetwater Union High School District survey costs represent about 7% of the

statewide survey costs ($60,340 divided by $907,678 = 6.65%, rounded to 7%).

B. The estimated costs for the Sweetwater Union High School District for this test claim for FY 2007-08 are $10,750 (see the declaration attached as Exhibit "A"). The imputed total statewide survey costs for FY 2007-08 would then be $153,500 ($10,750 divided by 7%=$153,571, rounded to $153,500).

C. The number of school districts responding to the WCI-I test claim represented about 10% of the county offices. The extrapolated statewide costs for FY 2007-08 would then be $1,535,000 ($153,500 divided 10%=$1,535,000).

County Offices of Education

The FY 2007-08 statewide cost extrapolation for county offices of education for this test claim is based on the FY 2007-08 estimated cost for the San Diego County Office of Education to implement the mandated activities, divided by the percentage that the San Diego County Office of Education's estimated FY 2004-05 WCI-I Implementation costs represented to the total FY 2004-05 amounts reported by the WCI-I survey, divided by the percentage of county offices of education responding to the WCI-I survey.

05-TC-04 Williams Case Implementation

County Office Survey Costs Reported for FY 2004-05

	Activity	Total	San Diego COE
1	Preparing to Implement Mandate-Ongoing	$184,029	$82,100
2	Teacher Assignments-Ongoing	94,070	8,600
3	Uniform Complaint Procedure-Ongoing	12,010	700

4	Financial and Compliance Audits-Ongoing	4,640	no data
5A	Preparing for Onsite Visits-Annual	206,820	25,500
5B	Conducting the Onsite Visit-Annual	305,160	52,900
5C	Reports and Monitoring-Annual	121,160	15,200
	Statewide Totals (COE)	$927,889	$185,000

A. The WCI-I total reported survey costs for county offices of education (COE) for FY 2004-05 were $927,889. The estimated amount reported by the test claimant San Diego County Office of Education for FY 2004-05 was $185,000. Therefore, the San Diego County Office of Education survey costs represent about 20% of the statewide survey costs ($185,000 divided by $927,889=19.93%, rounded to 20%).

B. The estimated costs for the San Diego County Office of Education for this test claim for FY 2007-08 are $18,100 (see the declaration attached as Exhibit "A"). The imputed total statewide survey costs for FY 2007-08 would then be $90,500 ($18,100 divided by 20%=$90,500).

C. The number of county offices of education responding to the WCI-I test claim represented about 23% of the county offices. The extrapolated statewide costs for FY 2007-08 would then be $393,500 ($90,500 divided by 23%=$393,478, rounded to $393,500).

Extrapolated Statewide Costs

	FY2007-08
K-12 School Districts	$1,535,000
County Offices of Education	$ 393,500
	$1,928,500

Subsequent fiscal year costs are anticipated to be the same.

PART C. FUNDING SOURCES

1. State Funds

A. Section 2 of Statutes of 2006, Chapter 704: Adds Education Code Section 1242, which at subdivision (a), amends Item 6110-266-0001 of Section 2.0 of Chapter 47 of the Statutes of 2006, to establish a specific allocation schedule for the county office of education site visits pursuant to Sections 1240 and 52056 of the Education Code, as previously described above. However, none of these funds have been specifically identified as applicable to the increased activities required by Statutes of 2006, Chapter 704.

B. Section 6 of Statutes of 2006, Chapter 704: Statutes of 2004, Chapter 899 appropriated funds to State Department of Education for transfer to the State Allocation Board for grants to school districts under the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Account. Education Code Section 17592.72, as amended by Statutes of 2006, Chapter 704, Section 6, states that all monies in the School Facilities Emergency Repair Account continue to be available for reimbursement to schools in deciles 1 to 3. Statutes of 2007, Chapter 171, the FY 2007-08 State Budget Bill, appropriates at item 6110-485-001 the sum of $100 million for the School Facilities Emergency Repair Account. However, none of these funds have been specifically identified as applicable to the increased activities required by Statutes of 2006, Chapter 704.

C. Section 9 of Statutes of 2006, Chapter 704: Statutes of 2004, Chapter 900,

appropriated $15,000,000 for allocation to county offices of education for review and monitoring of schools. Statutes of 2006, Chapter 704, Section 9, states that the remaining unencumbered balance of these funds shall remain available for expenditure through June 30, 2008. However, none of these funds have been specifically identified as applicable to the increased activities required by Statutes of 2006, Chapter 704. purpose of the school facility inspections conducted by county offices of education.

2. Federal Funds

There are no funds specifically appropriated for the implementation of the mandate.

3. Non-local Agency Funds

There are no funds specifically appropriated for the implementation of the mandate.

4. Local Agency General Purpose Funds

There are no funds specifically appropriated for the implementation of the mandate.

5. Fee authority to offset costs

There is no fee authority for the implementation of the mandate.

PART D. RELEVANT MANDATE DETERMINATIONS

The test claim legislation includes activities which are the subject matter of other test claims in process:

02-TC-30 School Facilities Funding Requirements

03-TC-02 Uniform Complaint Procedures

03-TC-07 Instructional Materials Adoption

03-TC-09 Teacher Credentialing

04-TC-01 Clean School Restrooms

05-TC-04 Williams Case Implementation

6. DECLARATIONS

Attached as Exhibit "A"

7. DOCUMENTATION

Exhibit A Declarations:

-Charmaine Lawson, Coordinator, District and School Improvement, Williams Settlement Coordination, San Diego County Office of Education

-Declaration of Karen Janney, Assistant Superintendent, Academic Growth and Development, Sweetwater Union High School District

Exhibit B Statutes of 2006, Chapter 704 (AB 607)

Exhibit C Regulations:

Title 2, CCR, Sections 1859.300-1859.330

Exhibit D Executive Orders

Emergency Repairs Program:

-Application Submittal Requirements Checklist

-Grant Request replaces *Application For Reimbursement and Expenditure Report,* Form SAB 61-03 (revised 01/07)

-Expenditure Report, Form SAB 61-04 (new 01/07)

School Facilities Needs Assessment Grant Program:

-Online School Facilities Needs Assessment Submittal [Web-based} Program replaces:

Certificate of Eligibility

Needs Assessment Report Worksheet

Progress Report Survey

Facility Inspection Tool (FIT) (new 06/07)

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COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education

12/11/07
Date

APPOINTMENT OF REPRESENTATIVE

The San Diego County Office of Education appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education

12/11/07
Date

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

Dianne Russo — 12-11-07

Dianne L. Russo, Chief Fiscal Officer — Date
Sweetwater Union High School District

APPOINTMENT OF REPRESENTATIVE

The Sweetwater Union High School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Dianne Russo — 12-11-07

Dianne L. Russo, Chief Fiscal Officer — Date
Sweetwater Union High School District

Document	Pages	Total Pages
Declaration of Charmaine Lawson, Coordinator District and School Improvement Williams Settlement Coordination San Diego County Office of Education	1-13	13
Declaration of Karen Janney, Assistant Superintendent Academic Growth and Development Sweetwater Union High School District	1-15	15

DECLARATION OF CHARMAINE LAWSON
SAN DIEGO COUNTY OFFICE OF EDUCATION

WILLIAMS CASE IMPLEMENTATION II

Test Claim of San Diego County Office of Education
and Sweetwater Union High School District.

STATUTES

Statutes of 2006, Chapter 704 (AB 607), effective January 1, 2007

EDUCATION CODE SECTIONS

1240 1242 1242.5 17002 17592.72 35186 60119

REGULATIONS

Title 2, Sections 1859.300 through 1859.330, Register 2007, No. 27

Related Executive Orders

Emergency Repairs Program:

-*Application Submittal Requirements Checklist*

-*Grant Request* replaces *Application For Reimbursement and Expenditure Report,* Form SAB 61-03 (revised 01/07)

-*Expenditure Report,* Form SAB 61-04 (new 01/07)

School Facilities Needs Assessment Grant Program:

-*Online School Facilities Needs Assessment Submittal [Web-based} Program* replaces:

Certificate of Eligibility
Needs Assessment Report Worksheet
Progress Report Survey

-*Facility Inspection Tool* (FIT) (new 06/07)

Declaration and Statement

I, Charmaine Lawson, Coordinator, District and School Improvement, Williams Settlement Coordination, San Diego County Office of Education, make the following declaration and statement.

In my capacity as Coordinator, District and School Improvement, Williams Settlement Coordination, I am the administrative official responsible for the implementation of the Williams Case mandate legislation by the San Diego County Office of Education. I am familiar with the provisions and requirements of the Statutes, Education Code, and Title 2 Sections enumerated above. These new laws and regulations result in increased costs to, and a new level of service for, the San Diego County Office of Education for the required monitoring and oversight of school districts within the jurisdiction of the San Diego County Office of Education which implement the Williams Case legislation, as well as increased costs to, and a new level of service for, the San Diego County Office of Education in its capacity as a local education agency which operates schools as a "school district." This declaration is limited to the new activities and costs required for monitoring and oversight of the school districts within the jurisdiction of the San Diego County Office of Education. The Sweetwater Union High School District declaration includes the activities required of a local education agency which operates schools.

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PART 1. NEW PROGRAM AND INCREASED LEVEL OF SERVICES

The new Williams Case mandate legislation results in increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel, to implement the following activities:

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (A)

Education Code Section 1240 (c)(1) required the county superintendent of schools to visit and examine each school within its jurisdiction at reasonable intervals to observe its operation and to learn of its problems. The county superintendent may annually present a report of the state of the schools in his or her county, and of his or her office, including but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

Education Code Section 1240, subdivision (c)(2)(A), required the county superintendent of schools to annually submit a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county. As amended by Statutes of 2006, Chapter 704, for fiscal years 2004-05 to 2006-07, the report shall be submitted at a regularly scheduled November board meeting.

Education Code Section 1240, subdivision (c)(2)(A), required that the report must describe the state of the schools in the county or of his or her office that are

ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, of his or her observations while visiting the schools. As amended, the report must include his or her determinations for each school and the reasons for the determinations, regarding: sufficient textbooks, school facility conditions, the accuracy of data reported on the school accountability report card with respect to sufficient textbooks, and the safety, cleanliness, and adequacy of school facilities, including good repair. Also, as a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in renumbered paragraph (l) [formerly paragraph (e)] and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (B)

Education Code Section 1240, subdivision (c) (2) (B), as amended, requires commencing with the 2007-08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, must annually submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in

deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report must include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (D)

Education Code Section 1240, subdivision (c) (2) (D), as amended, excludes from schools ranked in deciles 1 to 3, on the 2006 base API, schools operated by county offices of education pursuant to Educational Code Section 56140, as determined by the department.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (E)

Education Code Section 1240, subdivision (c) (2) (E) (i), as amended, requires that commencing with fiscal year 2010-11 and every third year thereafter, the state superintendent must identify a list of schools ranked in deciles 1 to 3, inclusive, of the API, for which the county superintendent shall annually submit a report at a regularly

scheduled November board meeting. Item (ii) requires the list of decile 1-3 schools to be based on the API for the preceding year. Item (iii) requires, as a condition for the receipt of funds, the annual report must include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (G)

Education Code Section 1240, subdivision (c) (2) (G) [previously subparagraph (D)], required the county superintendent to report the results of the visits and reviews conducted that quarter to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements. As amended, that report must include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances including the sufficiency of textbooks, condition of school facilities, and the accuracy of data reported on the school accountability report card regarding the sufficiency of textbooks, and the safety, cleanliness, and adequacy of school facilities,

including good repair, and teacher misassignments and teacher vacancies. If the county superintendent or his or her designee does not conduct any visits or reviews that quarter, the quarterly report shall report the fact.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (K)

Education Code Section 1240, subdivision (c) (2) (K), as amended, requires that if the county superintendent determines that the condition of a school facility poses an emergency or urgent threat to the health and safety of pupils or staff or is not in good repair, the county superintendent is authorized to:

(i) Return to the school to verify repairs; or

(ii) Prepare a report that identifies and documents the instances of non-compliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent's visit or, for major projects, has not evidenced that the repairs will be made in a timely manner. The report may be provided to the governing board of the school district, if so, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on its Internet Web site, and the report shall be removed from the Web site when the county superintendent verifies that the repairs have been completed.

Education Code Section 1240, subdivision (i)

Education Code Section 1240, subdivision (i), required the county

superintendent to enforce the use of state textbooks and instructional materials and to specifically review compliance at decile 1-3 schools within the county superintendent's jurisdiction. Superintendents in counties with more than 200 decile 1-3 schools were allowed to utilize a combination of visits and written surveys to accomplish this duty.

As amended, subparagraph (3) (B), requires that if a county superintendent surveys teachers at a school where he or she has found sufficient textbooks and instructional materials for the previous two consecutive years, and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the district.

Subparagraph (4) (B) required the county superintendent to provide a report to the school district if the superintendent determines that the district does not have sufficient textbooks and materials. As amended, this report must be provided within 10 business days.

Education Code Section 17002, subdivision (d)

Education Code Section 17002 defines specific terms relating to the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Subdivision (d), paragraph (1), previously defined "good repair" to mean the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an "interim" evaluation instrument as developed by the Office of Public Construction.

Statutes of 2006, Chapter 704, amended the subdivision (d) (1) definition to require "good repair" to be determined pursuant to a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the state board, or a local evaluation instrument that meets the same criteria. In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection and evaluation instrument and local evaluation instruments must comply with the new definition and SAB forms the Office of Public School Construction must develop by July 1, 2007.

PART 2. COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for the San Diego County Office of Education.

1. IMPLEMENTING MANDATE AMENDMENTS

Policies, Procedures, Planning, Training: Staff time amending previous policies and procedures to incorporate changes made to program and forms and training school district and county office staff to implement the mandate.

Estimated Costs July 2007 through June 2008 $8,700

2. COUNTY OFFICE INSPECTIONS OF WILLIAMS DECILES 1-3 SCHOOLS

A. School Site Inspection Reports: Staff time to include in the school field inspection report to the school district governing boards, pursuant to Section 1240 (c)(2)(A), the determinations inspections [stated in renumbered paragraph (l), formerly paragraph (e)]

for each school and the reasons for the determinations, regarding: sufficient textbooks, school facility conditions, the accuracy of data reported on the school accountability report card with respect to sufficient textbooks, and the safety, cleanliness, and adequacy of school facilities, including good repair.

Estimated Costs July 2007 through June 2008 $800

B. Standard Reporting Forms: Staff time to utilize, pursuant to Section 1240 (c)(2)(A), as a condition for receipt of funds, the standardized template and SAB forms to report the circumstances listed from the schoolsite inspections [renumbered paragraph (I), formerly paragraph (e)] and teacher misassignments and teacher vacancies.

Estimated Costs July 2007 through June 2008 $4,600

C. Compliance Verification and Reporting: Where the school site inspection indicates that the condition of the school facility poses an emergency or urgent threat to health and safety or is not in "good repair" as defined by Section 17002, the staff time to, pursuant to Section 1240 (k), to:

(i) Return to the school to verify repairs; or

Estimated Costs July 2007 through June 2008 $2,100

(ii) (1) Prepare a report that identifies and documents the instances of non-compliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent's visit or, for major projects,

has not evidenced that the repairs will be made in a timely manner.

(2) Present the report to the governing board of the school district at a regularly scheduled meeting held in accordance with public notification requirements.

(3) Post the report on the county office internet Web site until the repairs have been completed.

Estimated Costs July 2007 through June 2008	$1,900
TOTAL COST ESTIMATE AMOUNT July 2007 through June 2008	$18,100

PART 3. FUNDING SOURCES

State Funds

A. Statutes of 2006, Chapter 704, at Sections 2, 6, and 9, appropriates, re-appropriates, and specifically allocates state funds related to the Williams implementation. However, none of these funds have been specifically identified as applicable to the increased activities required by Statutes of 2006, Chapter 704.

Other funds

No federal funds have been received by the county office of education, or are receivable, which were specifically appropriated to implement this mandate. No other state or local monies were received by the county office of education, or are receivable, which were specifically appropriated to implement this mandate. No federal, state, local government, or private grants or awards have been received by the county office of

education, or are receivable, which were specifically designated to implement this mandate. There is no authority in federal, state, or local law for this county office of education to levy fees to offset the costs to implement this mandate.

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CERTIFICATION

I hereby declare under penalty of perjury under the laws of the State of California that the information in this declaration is true and complete to the best of my own knowledge or information or belief.

EXECUTED this 12th day of December, 2007, at San Diego, California

Charmaine Lawson, Coordinator
District and School Improvement
Learning Resources and Educational Technology
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7399
Voice: 858-292-3518
Fax: 858-268-7913
E-Mail: clawson@sdcoe.net

DECLARATION OF KAREN JANNEY
SWEETWATER UNION HIGH SCHOOL DISTRICT

WILLIAMS CASE IMPLEMENTATION II

Test Claim of San Diego County Office of Education
and Sweetwater Union High School District.

STATUTES

Statutes of 2006, Chapter 704 (AB 607), effective January 1, 2007

EDUCATION CODE SECTIONS

1240 1242 1242.5 17002 17592.72 35186 60119

REGULATIONS

Title 2, Sections 1859.300 through 1859.330, Register 2007, No. 27

Related Executive Orders

Emergency Repairs Program:

-*Application Submittal Requirements Checklist*

-*Grant Request* replaces *Application For Reimbursement and Expenditure Report,* Form SAB 61-03 (revised 01/07)

-*Expenditure Report,* Form SAB 61-04 (new 01/07)

School Facilities Needs Assessment Grant Program:

-*Online School Facilities Needs Assessment Submittal [Web-based] Program* replaces:

Certificate of Eligibility
Needs Assessment Report Worksheet
Progress Report Survey

-*Facility Inspection Tool* (FIT) (new 06/07)

Declaration and Statement

I, Karen Janney, Assistant Superintendent, Academic Growth and Development, Sweetwater Union High School District, make the following declaration and statement.

In my capacity as Assistant Superintendent, Academic Growth and Development, I am the administrative official responsible for the implementation of the Williams Case mandate legislation by the school district. I am familiar with the provisions and requirements of the Statutes, Education Code Sections, and Title 2 Regulations enumerated above. These new laws and regulations result in increased costs to, and a new level of service for, school districts and county offices of education (in their capacity as a local education agency which operates schools as a "school district"), to implement the Williams Case legislation.

PART 1. NEW PROGRAM AND INCREASED LEVEL OF SERVICES

The new Williams Case mandate legislation results in increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel, to implement the following activities:

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (K)

Education Code Section 1240, subdivision (c) (2) (K), as amended, requires that if the county superintendent determines that the condition of a school facility poses an emergency or urgent threat to the health and safety of pupils or staff or is not in good repair, the county superintendent is authorized to:

(i) Return to the school to verify repairs; or

(ii) Prepare a report that identifies and documents the instances of non-compliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent's visit or, for major projects, has not evidenced that the repairs will be made in a timely manner. The report may be provided to the governing board of the school district. If so, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on its Internet Web site, and the report shall be removed from the Web site when the county superintendent verifies that the repairs have been completed.

Education Code Section 17002, subdivision (d)

Education Code Section 17002 defines specific terms relating to the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Subdivision (d), paragraph (1), previously defined "good repair" to mean the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an "interim" evaluation instrument as developed by the Office of Public Construction. Statutes of 2006, Chapter 704, amended the subdivision (d) (1) definition to require "good repair" to be determined pursuant to a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the state board, or a local evaluation instrument that meets the same criteria. In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection and evaluation instrument and local evaluation instruments must at

least include the following criteria:

(A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

(B)(i) Mechanical systems, including heating, ventilation, and air conditioning systems, are functional and unobstructed.

(ii) Appear to supply adequate amount of air to all classrooms, work spaces, and facilities.

(iii) Maintain interior temperatures within normally acceptable ranges.

(C) Doors and windows are intact, functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.

(D) Fences, and gates are intact, functional, and free of holes and other conditions that could present a safety hazard to pupils, staff, or others. Locks and other security hardware function as designed.

(E) Interior surfaces, including walls, floors, and ceilings, are free of safety hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of mold or mildew.

(F) Hazardous and flammable materials are stored properly. No evidence of peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or asbestos exposure are evident. There is no apparent evidence of hazardous materials that may pose a threat to the health and safety of pupils or staff.

(G) Structures, including posts, beams, supports for portable classrooms and ramps, and other structural building members appear intact, secure, and functional as

designed. Ceilings and floors are not sloping or sagging beyond their intended design. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines structural components.

(H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all emergency equipment and systems appear to be functioning properly. Fire alarm and pull stations are clearly visible. Fire extinguishers are current and placed in all required areas, including every classroom and assembly area. Emergency exits are clearly marked and unobstructed.

(I) Electrical systems, components, and equipment, including switches, junction boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly covered and guarded from pupil access, and appear to be working properly.

(J) Lighting appears to be adequate and working properly. Lights do not flicker, dim, or malfunction, and there is no unusual hum or noise from light fixtures. Exterior lights onsite appear to be working properly.

(K) No visible or odorous indicators of pest or vermin infestation are evident.

(L) Interior and exterior drinking fountains are functional, accessible, and free of leaks. Drinking fountain water pressure is adequate. Fountain water is clear and without unusual taste or odor, and moss, mold, or excessive staining is not evident.

(M)(i) Restrooms and restroom fixtures are functional.

(ii) Appear to be maintained and stocked with supplies regularly.

(iii) Appear to be accessible to pupils during the schoolday.

(iv) Appear to be in compliance with Section 35292.5, relating to cleanliness and maintenance of restrooms.

(N) The sanitary sewer system controls odor as designed, displays no signs of stoppage, backup, or flooding, in the facilities or on school grounds, and appears to be functioning properly.

(O) Roofs, gutters, roof drains, and downspouts appear to be functioning properly and are free of visible damage and evidence of disrepair when observed from the ground inside and outside of the building.

(P) The school grounds do not exhibit signs of drainage problems, such as visible evidence of flooded areas, eroded soil, water damage to asphalt playgrounds or parking areas, or clogged storm drain inlets.

(Q) Playground equipment and exterior fixtures, seating, tables, and equipment are functional and free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(R) School grounds, fields, walkways, and parking lot surfaces are free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(S) Overall cleanliness of the school grounds, buildings, common areas, and individual rooms demonstrates that all areas appear to have been cleaned regularly, and are free of accumulated refuse and unabated graffiti. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each

day that the school is in session.

Section 17002, subdivision (d), paragraph (2), subparagraph (A), as amended, requires that by July 1, 2007, the Office of Public School Construction must develop the school facility inspection and evaluation instrument and instructions for users. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall include a "good," "fair," or "poor" rating as developed by Office of Public School Construction, and an overall summary of each school's conditions on a scale of "exemplary," "good," "fair," or "poor."

Education Code Section 17592.72

Education Code Section 17592.72 determines the allocation of the School Facilities Emergency Repair Account. Subdivision (a), paragraph (1), as amended, establishes the API base for FY 2005-06 funds. Subdivision (a), paragraph (2), as amended, establishes the API base for FY 2006-07 funds, and requires the State Allocation Board to establish a grant application process and to post the grant application form on its Internet Web site. Subdivision (a), paragraph (3), as amended, states that for subsequent fiscal years, schools shall be eligible for funding based on the Academic Performance Index scores as specified in paragraph (2) of subdivision (c) of Section 1240.

Education Code Section 35186

Education Code Section 35186, subdivision (a), requires school districts to utilize the uniform complaint process provided for by Title 5, California Code of Regulations,

commencing with Section 4600. Subdivision (a), paragraph (1), as amended, requires school districts to write the report in English, and, when requested, in the primary language in which the complaint was filed, when 15% or more of students do not have English as their primary language as determined by Education Code Section 48985.

Subdivision (e), paragraph (3), as amended, includes violations relating to public and private school restrooms and their cleanliness, as stated under Education Code Section 35292.5.

Education Code Section 60119

Education Code Section 60119, subdivision (a), paragraph (1), subparagraph (A), requires the school district governing board to conduct a public hearing regarding its determination of whether there are sufficient textbooks and instructional materials for each school in the district. Paragraph (2), subparagraph (A), as amended, requires the governing board resolution for each school in which an insufficiency exists report the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each pupil does not have sufficient textbooks and instructional materials.

SECTION 2. REGULATORY MANDATES

Title 2, California Administrative Code

The State Allocation Board adopted Title 2 regulations (Register 2005, No. 45) on November 7, 2005, which certified emergency regulations (Register 2005, No. 22) adopted May 31, 2005, which were the subject of the first test claim. These regulations

are located at Title 2, Sections 1859.300 through 1859.330, and are titled "School Facilities Needs Assessment and Emergency Repair Program." This was a reimbursement program.

Since then, the Board has adopted additional emergency regulations (Register 2007, No. 27) operative July 2, 2007 to implement the facilities portion of Statutes of 2007, Chapter 704.

Section 1859.302, as amended by the 2007 Register, Number 27, operative July 2, 2007, as an emergency regulation, relating to School Facilities Emergency Repair Account, adds a reference to SAB Form 61-03 and adds a new definition for "grants."

Section 1859.318, as amended, replaces "reimbursement" with "funding" pursuant to Chapter 704, Statutes of 2006, which changes the program to a grant program, and adds Education Code Section 17592.72 as a reference.

Section 1859.320, as amended, adds a reference to SAB Form 61-03 and clarifies the use of this form.

Section 1859.321, as amended, adds at subdivision (b) a reference to SAB Form 61-03 and to Education Code Section 17592.72.

Section 1859.322, as amended, adds a reference to SAB Form 61-04, substitutes grant language for previous reimbursement language, establishes a new project funding priority, and requires local special reserve funds used for repairs to be reimbursed by the grant funds.

Section 1859.323, as amended, additionally requires that to be eligible for grant

funding consideration, the total project cost request on the Form SAB 61-03 must be $5,000 or higher, unless the LEA can justify its request for a lesser amount and adds application documentation preparation and submittal costs, if any, as permissible costs under Regulation Section 1859.323.2 (j).

Section 1859.323.1, as amended, adds grant funding language and clarifies the technical requirements for determination of replacement costs.

Section 1859.323.2, as amended, limits application costs reimbursement to no more than two percent of the total project costs or $5,000, which ever is greater.

Section 1859.324, as amended, adds grant funding language and changes the API references.

New Section 1859.324.1, as added, states that after review of a LEA's submitted Form SAB-61-04, projects that require a Grant Adjustment will be presented to the Board for approval and necessary determinations will be made.

Section 1859.326, as amended, regarding the audit of project costs, adds references to the amended regulations regarding return of funds and other technical corrections.

Section 1859.328, as amended, adds a reference to the new mandatory SAB Form 61-04.

Section 1859.329, as amended, adds grant funding language and provisions for grant adjustments.

New Section 1859.330, as added, requires emergency repairs to be completed

within 12 months without State Architect approval and 18 months when State Architect approval is required.

PART 2. COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for the Sweetwater Union High School District.

1. IMPLEMENTING MANDATE AMENDMENTS

Policies, Procedures, Planning, Training: Staff time amending previous policies and procedures to incorporate changes made to program and forms; amending the site inspection procedure to include the new expanded definition of "good repair," and training school district and county office staff to implement the mandate.

Estimated Costs July 2007 through June 2008 $350

2. FACILITIES

A. District School Facility Inspection System: Staff time implementing the expanded scope of the School Facilities Inspection System (SFIS) to ensure that each of the district's schools is maintained in good repair as now defined by Education Code Section 17002, subdivision (d), as amended by Chapter 704, Statutes of 2006, as a condition of receiving state building funds and deferred maintenance program funds.

Estimated Costs July 2007 through June 2008 No estimate

B. School Facilities Needs Assessment (SFNA): Staff time to prepare a comprehensive school facilities needs assessment for Deciles 1-3 schools pursuant to the new standards defined by Education Code Section 17002. Maintaining a copy of

the school facilities needs assessment and a list of emergency or urgent repairs completed or to be completed on site.

Estimated Costs July 2007 through June 2008 $7,600

C. School Facilities Emergency Repairs: Staff time to prepare the amended and new State Allocation Board required inspection and progress reports, site assessment reports, and grant funding applications, pursuant to the new process and forms established by the State Allocation Board, pursuant to Education Code Section 17592, subdivision (a) (1), as amended by Chapter 704, Statutes of 2006, as a condition of receiving state building funds and deferred maintenance program funds. Making emergency and urgent repairs. Complying with any audit requirements.

Estimated Costs July 2007 through June 2008 No estimate

3. UNIFORM COMPLAINT PROCEDURE

A. Primary Language Translations: Staff time to respond to complaints in the primary language in which the complaint is filed, when requested.

Estimated Costs July 2007 through June 2008 No estimate

B. Clean Restroom Requirements: Staff time to respond to complaints related to Education Code Section 35292.5 clean restroom standards.

Estimated Costs July 2007 through June 2008 No estimate

4. COUNTY OFFICE INSPECTIONS OF WILLIAMS DECILES 1-3 SCHOOLS

A Preparing for the COE "Return" Inspections: Staff time to prepare the reports and information required by the county office of education for its "return" inspections of the

district's and decile 1-3 school compliance with Williams, as provided for by Education Code Section 1240 (c) (2) (K).

Estimated Costs July 2007 through June 2008 $1,250

B Participating in the COE "Return" Reviews: Staff time to schedule site visits, staff and student interviews, documentation, and other administrative tasks to facilitate the "return" reviews.

Estimated Costs July 2007 through June 2008 $8,650

C Remediaton After COE "Return" Reviews: Staff time to prepare and implement corrective actions, facility repairs, apply for special funding, board action, updating policy and procedures, and other actions in response to the "return" review inspection findings.

Estimated Costs July 2007 through June 2008 $900

TOTAL COST ESTIMATE AMOUNT July 2007 through June 2008 $10,750

PART 3. FUNDING SOURCES

State Funds

Statutes of 2006, Chapter 704, at Sections 2, 6, and 9, appropriates, re-appropriates, and specifically allocates state funds related to the Williams implementation. However, none of these funds have been specifically identified as applicable to the increased activities required by Statutes of 2006, Chapter 704.

Other Funds

No federal funds have been received by the District, or are receivable, which

were specifically appropriated to implement this mandate. No other state or local monies were received by the District, or are receivable, which were specifically appropriated to implement this mandate. No federal, state, local government, or private grants or awards have been received by the District, or are receivable, which were specifically designated to implement this mandate. There is no authority in federal, state, or local law for this District to levy fees to offset the costs to implement this mandate.

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CERTIFICATION

I hereby declare under penalty of perjury under the laws of the State of California that the information in this declaration is true and complete to the best of my own knowledge or information or belief.

EXECUTED this 11th day of December, 2007, at Chula Vista, California

Karen Janney, Assistant Superintendent
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896
Voice: 619-691-5546
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Document	Pages	Total Pages
Statutes of 2006, Chapter 704 (A.B. 607)	4361-4374	14

(1) The State Emergency Plan established pursuant to Section 8560 of the Government Code.

(2) The California standardized emergency management system established pursuant to Section 8607 of the Government Code.

SCHOOLS AND SCHOOL DISTRICTS—REPORTS—FUNDS

CHAPTER 704

A.B. No. 607

AN ACT to amend Sections 1240, 17002, 17076.10, 17592.72, 35186, and 60119 of, and to add Sections 1242 and 1242.5 to, the Education Code, relating to school facilities, and making an appropriation therefor.

[Filed with Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 607, Goldberg School Facilities Emergency Repair Account.

(1) Existing law requires a county superintendent of schools, among other things, to visit and examine each school in the county to observe its operation and learn of its problems. Existing law requires the county superintendent to annually present a report to the governing board of each school district under his or her jurisdiction, and to the board of supervisors of the county, describing the state of the schools in the county that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API).

This bill would require the annual report to be submitted in November at a regularly scheduled meeting of the governing board. The bill would require the report to include certain determinations for each school and teacher misassignments and teacher vacancies and would require the county superintendent, or his or her designee, to use a standardized template to report those details, unless those details are already being reported by the county superintendent, or his or her designee.

The bill would require commencing with the 2006–07 fiscal year, certain funds appropriated pursuant to the Budget Act of 2006 to county offices of education for site visits to be allocated to elementary, middle or junior, and high schools, as specified. The bill would provide an additional allocation, as specified, to county offices of education that are responsible for visiting more than 150 schoolsites. The bill would set $10,000 as the minimum amount for allocation to county offices of education.

The bill would require the State Department of Education to review the actual costs of 2005–06 fiscal year site visits conducted and if the department determines that a county office of education did not expend the funds allocated, the amount that exceeds the amount spent shall revert to a certain fund and would be available to cover certain extraordinary costs incurred by county offices of education. The bill would require the department to allocate the funds to county offices of education by June 30, 2007.

(2) Existing law, the Leroy F. Greene School Facilities Act of 1998, requires the State Allocation Board to allocate to applicant school districts, prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition. Existing law requires a school district that receives funding pursuant to the act to submit to the board a summary report of expenditure of state funds and district matching funds annually until all state funds and district matching funds are expended and then to submit a final report, and authorizes the board to require an audit of these reports or other district records to ensure all funds received under the act are expended in accordance with program requirements. Existing law provides that, if the board, after the review of expenditures or the audit, determines that a school district failed to expend funds in accordance with the act, the Department of General Services is required to notify the school district of the amount that must be repaid within 60

days and to notify the Controller and the school district if the district fails to make that payment, and requires the Controller to deduct that amount from the district's next principal apportionment of state funds, as specified.

This bill would require the board to approve a plan of equal annual payments, with interest, as specified, over a period of up to 5 years if the board determines that repayment of the full liability within 60 days after the board's action would constitute a severe financial hardship, as defined by the board, for the school district. The bill would require the Controller to withhold certain amounts pursuant to the plan.

(3) Existing law establishes the School Facilities Emergency Repair Account in the State Treasury, to be administered by the State Allocation Board, for the purpose of reimbursing school districts with schools ranked in deciles 1 to 3, inclusive, on the API, as specified, for emergency facility repairs, as provided.

This bill would provide that, commencing with the 2006–07 fiscal year, the money in the account is also available to fund grants for certain, listed necessary repairs that meet certain conditions. The bill would require the board to establish a process for schools to apply for the grants and provide certification of the completion of the projects. The bill would require the board to post the grant application form on its Internet Web site.

(4) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, conditions of facilities that are not maintained in a clean and safe manner or in good repair, and teacher vacancy or misassignment. Existing law requires a notice to be posted in each classroom in each school in the school district notifying parents and guardians that there should be sufficient textbooks or instructional materials, school facilities must be clean, safe, and in good repair, and there should be no teacher vacancies or misassignments, as defined. Existing law also requires the notice to inform parents of the location to obtain a form to file a complaint in case of a shortage. Existing law authorizes a complaint to be filed anonymously. If a complainant identified himself or herself, the complainant is entitled to a response if he or she indicates that a response is requested.

This bill would require, if certain conditions are met, the report and response, if requested, to be written in English and the primary language in which the complaint was filed, thereby establishing a state-mandated local program.

(5) This bill would make other technical, nonsubstantive changes to existing law.

(6) This bill would make an appropriation by requiring the remaining unencumbered balance of certain funds appropriated to county offices of education for certain reviews and monitoring of schools and to conduct and report on site visits, as specified, to remain available for expenditure through June 30, 2008, for purposes of certain site visit reports on the state of certain schools.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, 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.

Appropriation: yes.

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c)(1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to,

his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2)(A) For fiscal years 2004–05 to 2006–07, inclusive, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API), as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools and his or her determinations for each school regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies. As a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

(B) Commencing with the 2007–08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include any schools determined by the department to meet either of the following:

(i) The school meets all of the following criteria:

(I) Does not have a valid base API score for 2006.

(II) Is operating in fiscal year 2007–08 and was operating in fiscal year 2006–07 during the Standardized Testing and Reporting (STAR) Program testing period.

(III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.

(ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.

(C) The department shall estimate an API score for any school meeting the criteria of subclauses (I) and (II) of clause (i) of subparagraph (B) of paragraph (2) and not meeting the criteria of subclause (III) of clause (i) of subparagraph (B) of paragraph (2), using available testing scores and any weighting or corrective factors it deems appropriate. The department shall post the API scores on its Internet Web site on or before May 1.

(D) For purposes of this section, references to schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall exclude any schools operated by county offices of education pursuant to Section 56140, as determined by the department.

(E)(i) Commencing with the 2010–11 fiscal year and every third year thereafter, the Superintendent shall identify a list of schools ranked in deciles 1 to 3, inclusive, of the API for which the county superintendent, or his or her designee, shall annually submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county that describes the state of the schools in the county

or of his or her office that are ranked in deciles 1 to 3, inclusive, of the base API as defined in clause (ii).

(ii) For the 2010–11 fiscal year, the list of schools ranked in deciles 1 to 3, inclusive, of the base API shall be updated using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the 2009 base API and thereafter shall be updated every third year using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the base API of the year preceding the third year consistent with clause (i).

(iii) As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

(F) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(G) On a quarterly basis, the county superintendent, or his or her designee, shall report the results of the * * * visits and reviews conducted that quarter to the governing board of the school district * * * at a regularly scheduled meeting held in accordance with public notification requirements. The results of the visits and reviews shall include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances listed in subparagraph (I) and teacher misassignments and teacher vacancies. If the county superintendent, or his or her designee, conducts no visits or reviews in a quarter, the quarterly report shall report that fact.

(H) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance, and the sufficiency of instructional materials, as defined by Section 60119.

(I) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy * * * or * * * paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(J) The county superintendent may make the status determinations described in subparagraph (I) during a single visit or multiple visits. In determining whether to make a single visit or multiple visits for this purpose, the county superintendent shall take into consideration factors such as cost-effectiveness, disruption to the schoolsite, deadlines, and the availability of qualified reviewers.

(K) If the county superintendent determines that the condition of a facility poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72, or is not in good repair, as

specified in subdivision (d) of Section 17002 and required by Sections 17014, 17032.5, 17070.75, and 17089, the county superintendent may, among other things, do any of the following:

(i) Return to the school to verify repairs.

(ii) Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent's visit or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on its Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually, on or before August 15, present a report to the governing board of the school district and the Superintendent regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i)(1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3)(A) Commencing with the 2005–06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the 2003 base * * * API, as defined in subdivision (b) of Section 17592.70, and * * * not currently under review pursuant to a state or federal intervention program, the county superintendent shall specifically review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be completed by the fourth week of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent of schools in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base * * * API, as defined in subdivision (b) of Section 17592.70, may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent of schools elects to conduct written surveys of teachers, the county superintendent of schools shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the school district as set forth in paragraph (4).

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of

subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), * * * or, if applicable, provide a copy of the report to the * * * school district within 10 business days pursuant to subparagraph (B) of paragraph (3).

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department * * * to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the * * * department * * * purchases textbooks or instructional materials for the school district, the department shall issue a public statement at * * * the first regularly scheduled meeting of the state board occurring immediately after the department receives the county superintendent's request and that meets the applicable public notice requirements, indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary for the purchase the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent, the Superintendent shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(*l*)(1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will * * * not meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent may reclassify any certification. If a county office of education receives a negative certification, the Superintendent, or his or her designee, may exercise the authority set forth in subdivision (c) of Section

1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 1242 is added to the Education Code, to read:

1242. (a) Commencing with the 2006–07 fiscal year, funds appropriated pursuant to Item 6110–266–0001 of Section 2.0 of Chapter 47 of the Statutes of 2006 to county offices of education for site visits conducted pursuant to Section 1240, shall be allocated as follows:

(1) Two thousand five hundred dollars ($2,500) for each elementary school.

(2) Three thousand five hundred dollars ($3,500) for each middle or junior high school.

(3) Five thousand dollars ($5,000) for each high school.

(b) In addition to the funds described in subdivision (a), county offices of education shall receive additional funding for sites whose enrollment in the prior year is 20 percent greater than the average enrollment of all sites for the prior year as follows:

(1) Two dollars and fifty cents ($2.50) for each pupil that exceeds a total elementary school enrollment of 856 pupils.

(2) Three dollars and fifty cents ($3.50) for each pupil that exceeds a total middle school or junior high school enrollment of 1,427 pupils.

(3) Five dollars ($5.00) for each pupil that exceeds a total high school enrollment of 2,296 pupils.

(c) County offices of education that are responsible for visiting more than 150 schoolsites shall receive an additional allocation of one dollar ($1.00) per pupil for the total prior year enrollment of all sites visited.

(d) The minimum amount for allocation pursuant to this section to county offices of education shall be ten thousand dollars ($10,000).

SEC. 3. Section 1242.5 is added to the Education Code, to read:

1242.5. On or before March 31, 2007, the department shall review the actual costs of 2005–06 fiscal year site visits conducted pursuant to Section 1240. If the department determines that a county office of education did not expend the funds allocated for this purpose during the 2006–07 fiscal year, the amount that exceeds the amount spent shall revert to the extraordinary cost pool created by Chapter 710 of the Statutes of 2005 and shall be available to cover the extraordinary costs incurred by county offices of education as a result of the reviews conducted pursuant to Section 1240. Based on a determination by the

department and the Department of Finance that is was necessary for a county office of education to incur extraordinary costs to conduct the site visits, funds in the amount necessary to cover these costs shall be allocated to the county office of education by June 30, 2007.

SEC. 4. Section 17002 of the Education Code is amended to read:

17002. The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

(b) "Board" means the State Allocation Board.

(c) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(d)(1) "Good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to * * * a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the board or a local evaluation instrument that meets the same criteria. Until the school facility inspection and evaluation instrument is approved by the board, "good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined by the interim evaluation instrument developed by the Office of Public School Construction or a local evaluation instrument that meets the same criteria as the interim evaluation instrument. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall not require capital enhancements beyond the standards to which the facility was designed and constructed. In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection and evaluation instrument and local evaluation instruments shall include at least the following criteria:

(A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

(B)(i) Mechanical systems, including heating, ventilation, and air-conditioning systems, are functional and unobstructed.

(ii) Appear to supply adequate amount of air to all classrooms, work spaces, and facilities.

(iii) Maintain interior temperatures within normally acceptable ranges.

(C) Doors and windows are intact, functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.

(D) Fences and gates are intact, functional, and free of holes and other conditions that could present a safety hazard to pupils, staff, or others. Locks and other security hardware function as designed.

(E) Interior surfaces, including walls, floors, and ceilings, are free of safety hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of mold or mildew.

(F) Hazardous and flammable materials are stored properly. No evidence of peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or asbestos exposure are evident. There is no apparent evidence of hazardous materials that may pose a threat to the health and safety of pupils or staff.

(G) Structures, including posts, beams, supports for portable classrooms and ramps, and other structural building members appear intact, secure, and functional as designed. Ceilings

and floors are not sloping or sagging beyond their intended design. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines structural components.

(H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all emergency equipment and systems appear to be functioning properly. Fire alarm pull stations are clearly visible. Fire extinguishers are current and placed in all required areas, including every classroom and assembly area. Emergency exits are clearly marked and unobstructed.

(I) Electrical systems, components, and equipment, including switches, junction boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly covered and guarded from pupil access, and appear to be working properly.

(J) Lighting appears to be adequate and working properly. Lights do not flicker, dim, or malfunction, and there is no unusual hum or noise from light fixtures. Exterior lights onsite appear to be working properly.

(K) No visible or odorous indicators of pest or vermin infestation are evident.

(L) Interior and exterior drinking fountains are functional, accessible, and free of leaks. Drinking fountain water pressure is adequate. Fountain water is clear and without unusual taste or odor, and moss, mold, or excessive staining is not evident.

(M)(i) Restrooms and restroom fixtures are functional.

(ii) Appear to be maintained and stocked with supplies regularly.

(iii) Appear to be accessible to pupils during the schoolday.

(iv) Appear to be in compliance with Section 35292.5.

(N) The sanitary sewer system controls odor as designed, displays no signs of stoppage, backup, or flooding, in the facilities or on school grounds, and appears to be functioning properly.

(O) Roofs, gutters, roof drains, and downspouts appear to be functioning properly and are free of visible damage and evidence of disrepair when observed from the ground inside and outside of the building.

(P) The school grounds do not exhibit signs of drainage problems, such as visible evidence of flooded areas, eroded soil, water damage to asphalt playgrounds or parking areas, or clogged storm drain inlets.

(Q) Playground equipment and exterior fixtures, seating, tables, and equipment are functional and free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(R) School grounds, fields, walkways, and parking lot surfaces are free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(S) Overall cleanliness of the school grounds, buildings, common areas, and individual rooms demonstrates that all areas appear to have been cleaned regularly, and are free of accumulated refuse and unabated graffiti. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each day that the school is in session.

(2)* * * (A) On or before January * * * 1, 2007, the Office of Public School Construction shall develop the * * * school facility inspection and evaluation instrument * * * and instructions for users. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall include a system that will evaluate each facility, based on the criteria listed in paragraph (1), on a scale of "good," "fair," or "poor," as developed by the Office of Public School Construction, and provide an overall summary of the conditions at each school on a scale of "exemplary," "good," "fair," or "poor."

(B) On or before July 1, 2007, the Office of Public School Construction, in consultation with county offices of education, shall define objective criteria for determining the overall summary of the conditions of schools.

(C) For purposes of this paragraph, "users" means local educational agencies that participate in either of the programs established pursuant to this chapter, Chapter 12.5 (commencing with Section 17070.10), or Section 17582.

(e) "Lease" includes a lease with an option to purchase.

(f) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

SEC. 5. Section 17076.10 of the Education Code is amended to read:

17076.10. (a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or modernizing its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c)(1) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as appropriate.

(2) Notwithstanding paragraph (1), if the board determines that repayment of the full liability within 60 days after the board action would constitute a severe financial hardship, as defined by the board, for the school district, the board shall approve a plan of equal annual payments over a period of up to five years. The plan shall include interest on each year's outstanding balance at the rate earned on the state's Pooled Money Investment Account during that year. The Controller shall withhold amounts, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution, pursuant to the plan.

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application.

SEC. 6. Section 17592.72 of the Education Code is amended to read:

17592.72. (a)(1) For the 2005–06 fiscal year, all moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to meet the repair costs of the school district projects that meet the criteria specified in subdivisions (c) and (d) and as approved by the State Allocation Board.

(2) Commencing with the 2006–07 fiscal year, all moneys in the School Facilities Emergency Repair Account are available for the purpose of providing emergency repair grants to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to cover the costs of school district repair projects that meet the criteria specified in subdivisions (c) and (d). The State Allocation

Board shall establish a grant application process, grant parameters, substantial progress requirements, and a process for providing certification of the completion of projects. The State Allocation Board shall post the grant application form on its Internet Web site.

(3) For subsequent fiscal years, schools shall be eligible for funding based on the Academic Performance Index scores as specified in paragraph (2) of subdivision (c) of Section 1240.

(b)(1) It is the intent of the Legislature that each school district exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs.

(2) Funds made available pursuant to this article shall supplement, not supplant, existing funds available for maintenance of school facilities.

(3) The board is authorized to deny future funding pursuant to this article to a school district if the board determines that there is a pattern of failure to exercise due diligence pursuant to paragraph (1) or supplantation. If the board finds a pattern of failure to exercise due diligence, the board shall notify the county superintendent of schools in which the school district is located.

(c)(1) For purposes of this article, "emergency facilities needs" means structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. These projects may include, but are not limited to, the following types of facility repairs or replacements:

(A) Gas leaks.

(B) Nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems.

(C) Electrical power failure.

(D) Major sewer line stoppage.

(E) Major pest or vermin infestation.

(F) Broken windows or exterior doors or gates that will not lock and that pose a security risk.

(G) Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff.

(H) Structural damage creating a hazardous or uninhabitable condition.

(2) For purposes of this section, "emergency facilities needs" does not include any cosmetic or nonessential repairs.

(d) For the purpose of this section, structures or components shall only be replaced if it is more cost-effective than repair.

SEC. 7. Section 35186 of the Education Code is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. If Section 48985 is otherwise applicable, the response, if requested, and report shall be written in English and the primary language in which the complaint was filed. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or

designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state-adopted or district-adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a teacher vacancy exists.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20–percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate and the requirements established pursuant to subdivision (a) of Section 35292.5.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents, guardians, pupils, and teachers of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) There should be no teacher vacancies or misassignments as defined in paragraphs (2) and (3) of subdivision (h).

(4) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Internet Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(h) For purposes of this section, the following definitions apply:

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

SEC. 8. Section 60119 of the Education Code is amended to read:

60119. (a) In order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1)(A) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has sufficient textbooks or instructional materials, or both, that are aligned to the content standards adopted pursuant to Section 60605 in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History–social science.

(iv) English/language arts, including the English language development component of an adopted program.

(B) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack, year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004–05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(C) As part of the hearing required pursuant to this section, the governing board shall also make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials, or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(2)(A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth, in the resolution, for each school in which an insufficiency exists, the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has

sufficient textbooks or instructional materials, or both, within two months of the beginning of the school year in which the determination is made.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c)(1) For purposes of this section, "sufficient textbooks or instructional materials" means that each pupil, including English learners, has a standards-aligned textbook or instructional materials, or both, to use in class and to take home. This paragraph does not require two sets of textbooks or instructional materials for each pupil.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

(d) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

SEC. 9. Notwithstanding any other provision of law, the remaining unencumbered balance of funds appropriated in paragraph (2) of subdivision (a) of Section 23 of Chapter 900 of the Statutes of 2004 shall remain available for expenditure through June 30, 2008, for the purposes set forth in paragraph (2) of subdivision (c) of Section 1240 of the Education Code and pursuant to Section 4 of Chapter 710 of the Statutes of 2005.

SEC. 10. 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.

LAW ENFORCEMENT AGENCIES—CRIMES AND OFFENSES—SURVEILLANCE

CHAPTER 705

A.B. No. 618

AN ACT to amend Section 7480 of the Government Code, relating to crime.

[Filed with Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 618, Cogdill Crime.

Document	Pages	Total Pages
Title 2, CCR, Sections 1859.302-1859.330	1-29	29

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2 CA ADC § 1859.302

2 CCR s 1859.302

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s 1859.302. Definitions.

For the purposes of these Subgroup 5.7 regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:
"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information and Required Documentation section of the Form SAB 61-03,Grant Request,(Rev. 01/07), as appropriate, and the OPSC has accepted the application.
"Act" means California Education Code (EC) Sections 17592.70 through 17592.73, inclusive, and 41207.5.
"Apportionment" means an allocation of funds by the Board for eligible School Facilities Needs Assessment Grant Program or Emergency Repair Program costs.
"Board" means the State Allocation Board as established by Section 15490 of the Government Code.
"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by the LEA to the California Department of Education (CDE).
"Certification of Eligibility" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of a one-time determination of whether a school site meets the provisions of Section 1859.311(b).
"Cosmetic Repairs" means repairs that enhance the physical environment of the school and are not directly related to the mitigation of a health and safety hazard.
"Deferred Maintenance Program (DMP)" means the State deferred maintenance funding authorized by EC Sections 17582 through 17588, inclusive.
"Emergency Facilities Needs" means structures or systems that in their present condition pose an immediate threat to the health and safety of pupils and staff while at school.
"Emergency Repair Program (ERP)" means the repair program implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.
"ERP Grant" means an Apportionment provided by the State to the LEA for eligible costs, pursuant to EC Section 17592.72 and Regulation Sections 1859.323, 1859.323.1, and 1859.323.2.
"Employee" means an individual that is a classified or certificated temporary, probationary or permanent employee receiving a warrant as payment from the LEA.
"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.
"Form SAB 61-01" means theNeeds Assessment Report, Form SAB 61-01 (New 01/05), which is incorporated by reference.

"Form SAB 61-02" means theExpenditure Report, Form SAB 61-02 (New 02/05), which is incorporated by reference.
"Form SAB 61-03" means theGrant Request, Form SAB 61-03 (Rev. 01/07), which is incorporated by reference.
"Form SAB 61-04" means theExpenditure Report, Form SAB 61-04 (New 01/07), which is incorporated by reference.
"Grant" means an apportionment for a request for an Emergency Repair Program project and can include reimbursement for projects already completed.
"Grant Adjustment" means an increase or a decrease in the Grant after review of the Form SAB 61-04.
"Interim Evaluation Instrument" means the evaluation tool developed pursuant to EC Section 17002.
"LEA Representative" means a member of the LEA staff or other agent authorized to execute and file application(s) with the Board on behalf of the LEA and/or act as liaison between the Board and the LEA.
"Like-Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.
"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.
"Needs Assessment" means the review of the facilities conducted pursuant to the Section 1859.315(c), the Form SAB 61-01 and EC Section 17592.70.
"Needs Assessment Grant" means the funding provided pursuant to EC Section 17592.70(c) and Sections 1859.312 and 1859.313.
"Nonessential Repairs" means work that is not directly related to the mitigation of a health and safety hazard including, but not limited to, repairs to correct items not in compliance with Title 24 of the California Code of Regulations that existed prior to and are not an Emergency Facilities Needs.
"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 School Facilities Needs Assessment Grant Program and the Emergency Repair Program.
"Pupil" means a student enrolled in any grade Kindergarten through grade twelve including individuals with exceptional needs meeting the provisions of EC Section 56026.
"Ready for Apportionment" means a review of an Accepted Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an Apportionment, and the OPSC will recommend approval to the Board.
"Routine Restricted Maintenance Account" means the account into which funds are deposited by LEAs pursuant to EC Section 17070.75.
"School Facilities Emergency Repair Account" means the account established by the OPSC pursuant to EC Section 17592.71(a).
"School Facilities Needs Assessment Grant Program" means the one-time assessment of school facilities implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.
"School Facility Program (SFP)" means the Leroy F. Greene School Facilities Act of 1998, commencing with EC Section 17070.10.
"Section" means a section in these Subgroup 5.7 regulations.
"Unfunded List" means an information list of unfunded projects including projects partially funded on a prorated basis pursuant to Section 1859.322(b)(1).
"Web-Based Needs Assessment" means the on-line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the one-time purpose of submitting the Needs Assessment data electronically.
"Web-Based Progress Report Survey" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of submitting a one-time report on the progress made toward completing the Needs Assessment.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.70, 17592.71, 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the

following day.

2. Certificate of Compliance as to 5-31-2005 order, including reordering of definitions to correct alphabetical order, transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of definitions of "Accepted Application(s)," "Apportionment," Emergency Repair Program Grant," "Form SAB 61-03," "School Facility Program" and "Unfunded List" and new definitions of "Form SAB 61-04," "Grant" and "Grant Adjustment" filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.302, 2 CA ADC s 1859.302
1CAC

2 CA ADC s 1859.302

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2 CA ADC § 1859.318

2 CCR s 1859.318

Cal. Admin. Code tit. 2, s 1859.318

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s 1859.318. Supplement, Not Supplant, Needs Assessment Grant Funds.

Needs Assessment Grant funds remaining after the completion of the Needs Assessment must be used for repairs authorized in Section 1859.313(b) and must be used to supplement, not supplant, funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with this requirement, the LEA must comply with all of the following in the 2005/2006 fiscal year:
(a) Deposit the funding level required pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.

(b) Deposit an amount equal to the State's matching share of the basic grant pursuant to EC Section 17584, if participating in the DMP.

(c) If either (a) or (b) are not applicable, the district must budget an amount not less than the average maintenance budget for the three previous fiscal years.

(d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of subsection (d) and Note filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.318, 2 CA ADC s 1859.318
1CAC

2 CA ADC s 1859.318

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2 CA ADC § 1859.320

2 CCR s 1859.320

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s 1859.320. General.

An LEA seeking an ERP Grant for funding of costs for repairs or replacement of existing structural components or building systems that pose(d) a health and safety threat to the pupils or staff while at school, as defined by EC Section 17592.72(c)(1), shall submit to the OPSC a completed Form SAB 61-03.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New article 3 (sections 1859.320-1859.329) and section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.320, 2 CA ADC s 1859.320
1CAC

2 CA ADC s 1859.320

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s 1859.321. Eligible Schools.

Eligible schools are determined as follows:
(a) An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:

(1) The school was identified on the list published by the CDE pursuant to EC Section 17592.72.

(2) The school was newly constructed prior to January 1, 2000.

(b) Commencing with the 2007/08 Fiscal Year and for subsequent fiscal years, an LEA that has a school site that is identified by the CDE pursuant to EC Section 17592.72 is eligible to submit a Form SAB 61-03.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register

2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.321, 2 CA ADC s 1859.321
1CAC

2 CA ADC s 1859.321

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2 CA ADC § 1859.322

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2 CCR s 1859.322

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s 1859.322. Emergency Repair Program Project Funding Order.

The Board shall make apportionments on a monthly basis for Grants in the order of receipt of an Accepted Application and for Grant Adjustments in the order of receipt of a complete Form SAB 61-04, as follows:
(a) If sufficient funding is available to provide funding to all applications presented that month, all applications will receive an Apportionment of the eligible costs.

(b) If funding is insufficient in any given month:

(1) Grants will be provided to each application on a prorated basis with the balance placed on the Unfunded List, unless the proration will result in funding less than 25 percent of the eligible project costs. The proration shall be determined by dividing the total funds available by the total eligible costs of all applications Ready for Apportionment. All Grant Adjustments will be placed on the Unfunded List.

(2) If the proration, as determined in (1) above, will be less than 25 percent of the eligible project costs, the Board shall provide Grant funding at 100 percent of the eligible project costs of the Grants based on date order received until funds are no longer available and the remaining Grant applications shall be placed on the Unfunded List. All Grant Adjustments will be placed on the Unfunded List.

(3) The Board will continue to accept and process applications for the purpose of developing an Unfunded List based on the order of receipt of the Accepted Applications.

When funds become available, projects on the Unfunded List will be apportioned in the order of date received. From available funds, Grants will be funded first and Grant Adjustments will be

funded second. After an Apportionment has been made by the Board, funds will be released automatically by the OPSC. If local funds have been expended, the Apportionment must be used by the LEA to reimburse the special reserve fund and the original source of funds used to make the LEA expenditures for the ERP project.

Once all ERP funds have been depleted, any applications that have received a prorated Apportionment, a Grant, or a Grant Adjustment will be deemed a full and final Apportionment any applications remaining fully unfunded on the Unfunded List will be returned to the LEA, and the Unfunded List shall be dissolved.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.71 and 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of section and Note filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.322, **+2 CA ADC s 1859.322+**
1CAC

+2 CA ADC s 1859.322+

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2 CA ADC § 1859.323

2 CCR s 1859.323

Cal. Admin. Code tit. 2, s 1859.323

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s 1859.323. Eligible Project Costs.

Funding will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). To be eligible for funding consideration, the total project cost request on the Form SAB 61-03 must be $5000 or higher unless the LEA can justify its request for a lesser amount. Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2 (j).
Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of first paragraph filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.323, 2 CA ADC s 1859.323
1CAC

2 CA ADC s 1859.323

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2 CA ADC § 1859.323.1

2 CCR s 1859.323.1

Cal. Admin. Code tit. 2, s 1859.323.1

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s 1859.323.1. Replacement Projects.

Funding of eligible replacement costs shall be provided only if it is more cost-effective to replace rather than repair a structural component or building system that poses a health or safety threat to pupils or staff while at school. For purposes of this section, it is more cost-effective to replace a structural component or building system when the estimated cost of an eligible repair is at least 75 percent of the cost of replacement.
If the cost to repair the component or system is less than 75 percent of the current replacement cost and the district elects to replace the component or system, then Grant funding shall be equal to the estimated cost of repair. Projects that use this option are not eligible for an increase to the Grant at the time of Grant Adjustment pursuant to Section 1859.324.1.
If the request is for replacement components or systems, a cost comparison must be prepared. The cost comparison shall consist of a repair cost estimate and a Like-Kind Material/System replacement cost estimate provided by qualified individual(s) or firm(s).
Replacement of a structural component or building system shall be limited to the use of a Like-Kind Material/System except when the work in the project proposes to use an alternative building material or system which is requested by the LEA. The cost comparison must also include the estimated cost of replacement using an alternative building material or system. If replacement with an alternate material/system is more costly than replacement with a Like-Kind Material/System, the LEA will receive funding for the alternate material/system in an amount not to exceed the cost of replacement with a Like-Kind Material/System. If it is determined that the only possible replacement is with the alternate material/system, the LEA will receive funding for the actual cost of replacement with the alternate material/system.
If the request is for replacement components or systems that included structural deficiencies, the cost comparison must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect's approval.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.323.1, 2 CA ADC s 1859.323.1
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2 CA ADC s 1859.323.1

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2 CA ADC § 1859.323.2

2 CCR s 1859.323.2

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s 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:
(a) New square footage, components, or building systems that did not previously exist.

(b) Nonessential Repairs.

(c) Cosmetic Repairs.

(d) Land acquisition.

(e) Furniture and equipment.

(f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.

(g) Costs covered under warranty or by insurance.

(h) Costs normally borne by others including, but not limited to, public utility companies.

(i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).

(j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or $5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re-calculated upon the grant adjustment determination pursuant to Section 1859.324.1.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. New subsection (j) filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.323.2, 2 CA ADC s 1859.323.2
1CAC

2 CA ADC s 1859.323.2

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2 CA ADC § 1859.324

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2 CCR s 1859.324

Cal. Admin. Code tit. 2, s 1859.324

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This database is current through 11/23/07, Register 2007, No. 47

s 1859.324. Funding.

An Emergency Repair Program Grant shall be used to fund the LEA's eligible costs, as defined by Sections 1859.323 and 1859.323.1 as follows:
(a) For schools ranked in deciles one to three, inclusive, based on the 2003 Academic Performance Index that meet requirements defined by Section 1859.321(a) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after September 29, 2004.

(2) Funds must have been Expended on or after September 29, 2004.

(3) Accepted Applications on or before June 30, 2007. If these ERP regulations are not in effect by March 31, 2007, LEAs may submit applications for 90 days following the effective date of the regulations.

(b) For schools ranked in deciles one to three, inclusive, based on the 2006 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2005.

(2) Funds must have been Expended on or after July 1, 2005.

(3) Accepted Applications on or before June 30, 2010.

(c) For schools ranked in deciles one to three, inclusive, based on the 2009 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2008.

(2) Funds must have been Expended on or after July 1, 2008.

(3) Accepted Applications on or before June 30, 2013.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of section heading and section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.324, **+2 CA ADC s 1859.324+**
1CAC

+2 CA ADC s 1859.324+

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2 CA ADC § 1859.324.1

2 CCR s 1859.324.1

Cal. Admin. Code tit. 2, s 1859.324.1

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s 1859.324.1. Grant Adjustments.

After review of a Form SAB 61-04, projects that require a Grant Adjustment will be presented to the Board for approval based upon one of the following review determinations:
(a) If the expenditures are less than the Grant, the Grant will be deemed the full and final apportionment for the project and the OPSC shall recommend to the Board that the Apportionment be reduced by the amount of savings realized by the LEA. The savings, which include any interest earned on the Grant funds, either declared by the LEA or determined by the OPSC, must be returned to the State. Upon the approval of the recommendation by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If the LEA fails to make the required payment within 60 days, the OPSC shall notify the Controller and the LEA in writing, and the Controller shall deduct an amount equal to the amount received by the LEA under this subdivision from the LEA's next principal apportionment or apportionments of state funds to the LEA, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained pursuant to this Section shall be deposited into the School Facilities Emergency Repair Account and will be made available for the funding of future ERP Grants and Grant Adjustments.

(b) If the expenditures are greater than the Grant apportionment, provided the additional expenditures are associated with the project's original scope, the OPSC shall recommend to the Board that the Apportionment be increased. The Grant Adjustment will be deemed as the full and final apportionment for the project.

(c) If the expenditures are equal to the Grant, no further Board action is necessary. The Grant will be deemed as the full and final apportionment for the project.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.324.1, 2 CA ADC s 1859.324.1
1CAC

2 CA ADC s 1859.324.1

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2 CA ADC § 1859.326

2 CCR s 1859.326

Cal. Admin. Code tit. 2, s 1859.326

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s 1859.326. Expenditures and Audit.

The projects shall be subject to audit to ensure that the expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.327, and 1859.328.
After a full and final Apportionment has been made pursuant to Regulation Section 1859.324.1, should the OPSC notify the LEA of an impending ERP audit of the expenditures reported on the Form SAB 61-04, an audit by the OPSC shall commence within six months. Once the audit has commenced, the OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.
Should the OPSC conduct an audit of the expenditures and information provided by the LEA, which may include certifications, for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of EC Section 17592.72(c) and Regulation Sections 1859.323 through 1859.329 inclusive, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a).

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005

and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of section heading and section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.326, 2 CA ADC s 1859.326
1CAC

2 CA ADC s 1859.326

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2 CA ADC § 1859.328

2 CCR s 1859.328

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s 1859.328. Supplement, Not Supplant, Emergency Repair Program Grant Funds.

Emergency Repair Program Grant funds must be used to supplement, not supplant funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with these requirements, the LEA must comply with all of the following at the time the Accepted Application and the Form SAB 61-04 are submitted to the OPSC:
(a) Deposit the funding level required for the current fiscal year pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.

(b) If participating in the DMP, the district:

(1) For applications submitted prior to January 1, 2006, has deposited an amount equal to the State's matching share of the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and

(2) For applications submitted on or after January 1, 2006, has deposited an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and

(3) Will deposit an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the next scheduled determination.

(4) Shall not transfer excess local funds in accordance with EC Section 17583 from the deposits made as specified in (2) and (3), above.

(c) If either (a) or (b) are not applicable, the district must budget for the current fiscal year an amount not less than the average maintenance budget for the three previous fiscal years.

(d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or

encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of first paragraph and subsection (d) filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.328, 2 CA ADC s 1859.328
1CAC

2 CA ADC s 1859.328

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2 CA ADC § 1859.329

2 CCR s 1859.329

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s 1859.329. Withdrawal and Amendment of Applications.

In the event an LEA has omitted costs from the Form SAB 61-03 at the time of submittal and the project has not received a Grant Apportionment from the Board, the LEA may withdraw its application and resubmit a revised Form SAB 61-03. The resubmitted application shall receive a new processing date by the OPSC. If the Board has already provided a Grant Apportionment for the project, the LEA may request the additional cost on the Form SAB 61-04. Additional expenditures must be associated with the project's original scope. If the Board has already provided a Grant Adjustment for the project, the LEA will not be able to receive additional funding for the project and the Apportionment provided by the Board will be considered full and final.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.329, 2 CA ADC s 1859.329
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2 CA ADC s 1859.329

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2 CCR s 1859.330

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s 1859.330. Time Limit on Grant Apportionment.

The LEAs that receive ERP Grants shall comply with all of the following provisions:
(a) When the Division of the State Architect's review and approval is not required, within 12 months of the Grant apportionment the LEA shall:

(1) Complete the emergency repair or replacement; and

(2) Submit the Form SAB 61-04 to the OPSC.

(b) When the Division of the State Architect's review and approval is required, within 18 months of the Grant apportionment the LEA shall:

(1) Complete the emergency repair or replacement; and

(2) Submit the Form SAB 61-04 to the OPSC.

If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action. Within 60 days of the OPSC notification, the LEA must submit to the State a warrant for the amount of the Apportionment and any interest earned on State funds. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a). Any rescinded funds returned to the State will be made available for the funding of future ERP Grants and Grant Adjustments. The LEA may re-file Form SAB 61-03 to request a Grant for the rescinded projects provided it meets the provisions of Section 1859.324 at the time of re-filing.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Sections 17592.72 and 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2 CCR s 1859.330, 2 CA ADC s 1859.330
1CAC

2 CA ADC s 1859.330

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Grant Request, Form SAB 61-03 (revised 01/07)	1-3	3
Expenditure Report, SAB 61-04 (new 01/07)	1-3	3
School Facilities Needs Assessment Grant Program		
Public School Construction Web page	1	1
Facility Inspection Tool (FIT) (new 06/07)	1-6	6

EMERGENCY REPAIR PROGRAM

Application Submittal Requirements Checklist

June 2007

The following items are necessary for the application package to be deemed *complete* by the Office of Public School Construction

☐ **Grant Request, Form SAB 61-03**
Parts A, B, and C completed.

☐ **Expenditure Report, Form SAB 61-04**
Parts A, B, and C completed.
Must submit in conjunction with Form SAB 61-03 if the request is for reimbursement.

☐ **Documentation to substantiate the health and safety threat.**
The list below contains examples of health and safety threat documentation. Provide one or more of the following, as appropriate:

- Signed Copy of the Interim Evaluation Instrument (IEI) identifying the project as a health and safety threat
- Copies of complaints made by parents, students, or staff referencing the problem
- Inspection report by qualified individual(s) or firms(s)
- Work orders that identify the health and safety hazard and the work done to mitigate the hazard
- Photos showing the condition of the project prior to the repair work being performed
- Other forms of documentation that substantiate the health and safety threat.

☐ **Cost Estimate**
Prepared by a qualified individual or firm. Must be as detailed as possible and account for all funding requested.

☐ **For Force Account Labor Projects,** Local Educational Agencies (LEAs) must submit a Work Order(s) or Other Document(s) containing the following information:

- Hourly Wages
- Number of Hours Spent on the Project
- Employee Name(s)

The LEA may utilize the Force Account Labor worksheet located on the OPSC website.

The LEA must retain the following documents, as appropriate, on file should the OPSC request them at the time of audit:

☐ **Construction Contract(s) and supporting documentation (if applicable)**
See Public Contract Code Section 20111(b)

☐ **Schedule of Values (if applicable)**

☐ **Cost Comparison pursuant to ERP Regulations Section 1859.323.1 (if applicable)**
Required for replacement projects. The comparison must contain all of the following:

- Estimated cost to repair the system/component
- Estimated cost to replace the system/component with a like-kind material/system
- If the LEA used an alternative material/system: Estimate cost to replace the system/component with an alternative building material/system

If the system/component is unable to be repaired and replacement is the only repair possible, the LEA must retain written documentation from a qualified individual or firm to substantiate this.

☐ **DSA Approved Plans/Specifications (if applicable)**

☐ **Purchase Order(s) and/or Purchase Agreement(s) (if applicable)**

☐ **Architect Agreement(s) and Schedule of Fees (if applicable)**

☐ **Qualification Appraisal documents** (pursuant to Government Code 4526)

☐ **Copy of Vendor Invoices (if applicable)**

☐ **Copy of Warrant(s) or Payment Voucher(s) (if applicable)**

Local Educational Agencies (LEAs) are encouraged to consider the utilization of "environmentally preferable purchasing" (EPP) for all their projects, including those projects seeking funding under the Emergency Repair Program (ERP). EPP is the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose. It provides an opportunity to improve the overall health and safety conditions at school facilities. Though the ERP is intended to provide funding for the minimal work necessary for the mitigation of health and safety risks, this objective can often be met with the utilization of EPP. More information about EPP products and sources can be found on the Green California Web site at www.green.ca.gov/EPP.

GENERAL INFORMATION AND REQUIRED DOCUMENTATION

The LEA shall use this form to apply for funding of Emergency Facilities Needs repairs under the Emergency Repair Program (ERP) at eligible schools sites as defined by Section 1859.321. An LEA must submit the following documentation with this form for each project requested on this application:

1. **Documentation:** Provide documentation that sufficiently substantiates the health and safety threat, which must include one or more of the following, as appropriate:
   - Signed copy of the Interim Evaluation Instrument (IEI) identifying the project as a health and safety threat
   - Copies of complaints made by parents, students, or staff referencing the problem
   - Inspection report by qualified individual(s) or firm(s)
   - Work orders that identify the health and safety threat
   - Photos showing the condition of the project prior to the repair work being performed
   - Other forms of documentation that substantiate the health and safety threat
2. **Cost Estimate:** All estimates must be as detailed as possible and no lump sum estimates will be accepted. Furthermore, the estimates must have been prepared by qualified individuals or firms. For force account labor projects, LEAs may provide an estimate by submitting a completed Force Account Labor Worksheet, which is available on the OPSC Web site.

The LEA must retain the following documents on file should the OPSC request them at the time of audit (see Part C. Certifications):

1. DSA Approved Plans and Specifications, if required
2. For Replacement Projects (pursuant to Regulation Section 1859.323.1), LEAs must retain a cost comparison on file which must include all of the following:
   - Estimate to Repair the system/component
   - Estimate to Replace the system/component with a Like-Kind Material/System
   - For alternative building material/system replacement projects, the LEA must additionally retain an Estimate to Replace the system/component with an alternative building material/system

   All estimates must be as detailed as possible and no lump sum estimates will be accepted. Furthermore, the estimates must have been prepared by qualified individuals or firms but are not required to be prepared by the same person(s).

SPECIFIC INSTRUCTIONS

Part A. Project Information

The LEA must complete one Project Detail box for each Type of Project that will be/has been repaired or replaced.

- **DSA Approval:** If any of the work indicated in any of the Project Detail boxes requires DSA approval, the LEA must check "Yes." Otherwise the LEA must check "No."
- **Type of Project:** Choose project type indicating the type of building system or structural component the project is addressing. The LEA may indicate only one building system or structural component per Project Detail box completed. Multiple Project Detail boxes may be completed. Use additional sheets if necessary.
- **Project(s) Cost:** Provide the total eligible cost based on the LEA's estimate(s) and/or actual cost(s).
- **Statement of Health and Safety Condition:** Provide a concise statement of the condition(s) and how it posed/poses a threat to the health and safety of the students and staff at the school site.
- **Type of Health/Safety Document(s) Attached:** Check the box(es) that identifies the type of health/safety document(s) enclosed with the LEA's application submittal.

Part B. Total Grant Request

Provide the Total Grant Request based on the combined total of the LEA's estimate(s) and/or actual cost(s) for all Types of Projects requested on this application. If the Total Grant Request is less than $5,000.00, the LEA must justify its request in the space provided.

Part C. Certifications

The LEA representative must complete this section.

LOCAL EDUCATIONAL AGENCY (LEA)	APPLICATION NUMBER (OPSC USE ONLY) 61/
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	SEVEN-DIGIT SITE CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)

PROJECT TYPES:

- Communication Systems
- Electrical
- Fire Detection/Alarm and/or Sprinkler System
- Flooring Systems
- Gas
- Hazardous Materials
- HVAC
- Paving
- Pest/Vermin Infestation
- Plumbing
- Roofing
- Structural Damage
- Wall Systems
- Windows/Doors/Gates
- Other

A. PROJECT DETAIL (Complete one box for each type of project at this site. Use additional sheets if necessary.):

Will any of the work in the project(s) contained in this Grant Request require DSA approval? ☐ Yes ☐ No

1. Type of Project (choose one from Project Types above): _____
   Project(s) Cost: ☐ Estimate ☐ Actual (check all that apply) $ _____
   Statement of Health and Safety Condition: _____
   Type of Health/Safety Document(s) Attached: ☐ Photo ☐ IEI ☐ Complaint ☐ Work Order ☐ Inspection Report ☐ Other _____

2. Type of Project (choose one from Project Types above): _____
   Project(s) Cost: ☐ Estimate ☐ Actual (check all that apply) $ _____
   Statement of Health and Safety Condition: _____
   Type of Health/Safety Document(s) Attached: ☐ Photo ☐ IEI ☐ Complaint ☐ Work Order ☐ Inspection Report ☐ Other _____

3. Type of Project (choose one from Project Types above): _____
   Project(s) Cost: ☐ Estimate ☐ Actual (check all that apply) $ _____
   Statement of Health and Safety Condition: _____
   Type of Health/Safety Document(s) Attached: ☐ Photo ☐ IEI ☐ Complaint ☐ Work Order ☐ Inspection Report ☐ Other _____

4. Type of Project (choose one from Project Types above): _____
   Project(s) Cost: ☐ Estimate ☐ Actual (check all that apply) $ _____
   Statement of Health and Safety Condition: _____
   Type of Health/Safety Document(s) Attached: ☐ Photo ☐ IEI ☐ Complaint ☐ Work Order ☐ Inspection Report ☐ Other _____

B. TOTAL GRANT REQUEST: $ _____

If the Total Grant Request is less than $5,000.00, the LEA must justify this request in the space below.

_____

_____

_____

_____

C. CERTIFICATIONS

I certify, as the LEA Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized representative by the governing board of the LEA as of _____; and,
- The repairs in this project were/are necessary to mitigate conditions that pose(d) a threat to the health and safety of pupils or staff while at school; and,
- The LEA has/will complied/comply with all laws pertaining to the repair of its school facilities;
- The LEA has/will complied/comply with the Public Contract Code; and,
- The LEA has satisfied the supplement, not supplant requirement as defined in Section 1859.328; and,
- The contracts for services or work in this project were not entered into prior to the date specified in Section 1859.324; and,
- The LEA understands that some or all of the funding for the project may be returned to the State as a result of an audit finding pursuant to Regulation Section 1859.326 and 1859.327;
- The LEA will/has comply/complied with Regulation Section 1859.323.2(h) when making repairs to leased facilities; and
- The LEA has on file all cost estimates required for replacement projects as stipulated in the General Information and Required Documentation section on this form and will make these documents available in the event the OPSC requests them for purposes of audit; and,
- The LEA will/has obtain/obtained the Division of State Architect's approval of the plans and specifications, if required, which will be/are on file at the LEA office for OPSC review; and
- The LEA will/has retain/retained on file all appropriate support documentation for this project. For the list of necessary documents please refer to the General Information and Required Documentation section of the Form SAB 61-04.
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

I certify under penalty of perjury under the laws of the State of California that the statements in this application and supporting documents are true and correct.

NAME OF LEA REPRESENTATIVE (PRINTED OR TYPED)	TITLE		
SIGNATURE OF LEA REPRESENTATIVE	DATE		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	E-MAIL ADDRESS		

GENERAL INFORMATION AND REQUIRED DOCUMENTATION

A Local Educational Agency (LEA) may use this form to report expenditures under the Emergency Repair Program (ERP) that support the Grant previously received. The LEA must retain the following documents, as appropriate, on file should the OPSC request them at the time of audit:

- Construction Contract(s) and supporting documentation [pursuant to Public Contract Code (PCC) Section 20111(b)]
- Schedule of Values
- DSA Approved Plans and Specifications and any change orders
- Cost comparison pursuant to Regulations Section 1859.323.1
- Purchase Order(s) and/or Purchase Agreement(s)
- Architect Agreement(s) and Schedule of Fees
- Qualification Appraisal documents (pursuant to Government Code 4526)
- Copy of Vendor Invoices
- Copy of Warrant(s) or Payment Voucher(s)
- For Force Account Labor Projects [pursuant to PCC Section 20114(a)], the OPSC Force Account Labor Worksheet or other documentation that contains the following information:
  - *Employee name(s)*
  - *Number of hours each employee spent on project*
  - *Hourly wages*

SPECIFIC INSTRUCTIONS

Part A. Project Detail

The LEA must complete one Project Detail line for each corresponding Project Detail box that was previously reported on the Form SAB 61-03. LEAs may print additional copies of page 2 as necessary to complete expenditure information.

- **Type of Project:** Choose project type indicating the type of building system or structural component for which the LEA previously requested funding on the Form SAB 61-03. The LEA may indicate only one building system or structural component per line. The numbered lines must correspond with the numbered Project Detail boxes on the Form SAB 61-03.
- **Project(s) Cost:** Provide a breakdown of the total eligible cost based on the LEA's actual cost(s).

Part B. Total Expenditure Amount

Provide the total expenditures based on the combined Total Project Cost(s) as reported in the Project Details box(es).

Part C. Certifications

The LEA representative must complete this section.

STATE OF CALIFORNIA
EXPENDITURE REPORT
EMERGENCY REPAIR PROGRAM
SAB 61-04 (NEW 01/07)

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

LOCAL EDUCATIONAL AGENCY (LEA)	APPLICATION NUMBER 61/
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	SEVEN-DIGIT SITE CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)

PROJECT TYPES:

- Communication Systems
- Electrical
- Fire Detection/Alarm and/or Sprinkler System
- Flooring Systems
- Gas
- Hazardous Materials
- HVAC
- Paving
- Pest/Vermin Infestation
- Plumbing
- Roofing
- Structural Damage
- Wall Systems
- Windows/Doors/Gates
- Other

A. PROJECT DETAIL

Complete one Project Detail line for each Type of Project as previously reported on the Form SAB 61-03. LEAs may print additional copies of this page as necessary to complete expenditure information.

	TYPE OF PROJECT (INDICATE PROJECT TYPE FROM ABOVE)	DSA NUMBER (IF APPLICABLE)	PLANNING COST	REPAIR/REPLACEMENT COST	TESTING	INSPECTION	TOTAL PROJECT COST
1.			$	$	$	$	$
2.			$	$	$	$	$
3.			$	$	$	$	$
4.			$	$	$	$	$
5.			$	$	$	$	$
6.			$	$	$	$	$
7.			$	$	$	$	$
8.			$	$	$	$	$
9.			$	$	$	$	$
10.			$	$	$	$	$
11.			$	$	$	$	$
12.			$	$	$	$	$
13.			$	$	$	$	$
14.			$	$	$	$	$
		TOTALS	$	$	$	$	$

B. TOTAL EXPENDITURE AMOUNT (Combined Project Detail Totals): $ _____

C. CERTIFICATIONS

I certify, as the LEA Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized representative by the governing board of the LEA as of _____; and,
- The LEA has on file all appropriate support documentation as stipulated in the General Information and Required Documentation section on this form and will make these documents available in the event the OPSC requests them for purposes of audit; and,
- The repairs in this project were necessary to mitigate conditions that posed a threat to the health and safety of pupils or staff while at school; and,
- The expenditures reported are within the original scope of the work identified in the Grant Request for this project; and,
- The LEA has complied with all laws pertaining to the repair of its school facilities; and,
- The LEA has complied with the Public Contract Code; and,
- The LEA has satisfied the supplement, not supplant requirement as defined in Section 1859.328; and,
- The expenditures for this project did not duplicate expenditures included in a School Facility Program, Deferred Maintenance Program or ERP project; and,
- The construction activities for this project(s) are completed; and,
- The LEA has complied with Regulation Section 1859.323.1 when replacing systems or components and has obtained a cost comparison which is on file at the LEA office for OPSC review; and,
- The LEA has complied with Regulation Section 1859.323.2(h) when making repairs to leased facilities; and
- The contracts for services or work in this project were not entered into prior to the date specified in Section 1859.324; and,
- The LEA understands that expenditures occurring after the submittal of this Expenditure Report are ineligible for reimbursement; and,
- Unless the project is determined to require a Grant Adjustment pursuant to ERP regulations Section 1859.324.1, that the grant amount previously provided by the Board shall be deemed a full and final apportionment, and that all Grant Adjustments are full and final; and,
- The LEA understands that some or all of the funding for the project may be returned to the State as a result of an audit pursuant to Regulation Sections 1859.326 and 1859.327; and,
- The LEA has obtained the Division of State Architect's approval of the plans and specifications, if required, which are on file at the LEA office for OPSC review; and
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

I certify under penalty of perjury under the laws of the State of California that the statements in this application and supporting documents are true and correct.

NAME OF LEA REPRESENTATIVE (PRINTED OR TYPED)	TITLE		
SIGNATURE OF LEA REPRESENTATIVE	DATE		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	E-MAIL ADDRESS		

California Home

Thursday, October 25, 2007

Department of General Services
Office of Public School Construction

ONLINE SCHOOL FACILITIES NEEDS ASSESSMENT SUBMITTAL PROGRAM

Welcome to the homepage of the Office of Public School Construction's Online School Facilities Needs Assessment, which is designed to meet the requirements of Senate Bill 6 (Alpert) Chapter 899, Statutes of 2004. To begin, please enter your five-digit district code and your Project Tracking Number password below.

Please Log In.

District Code

Password

Submit Reset

Need password help? Email OPSC

GENERAL INFORMATION

The Facility Inspection Tool (FIT) has been developed by the Office of Public School Construction to determine if a school facility is in "good repair" as defined by Education Code (EC) Section 17002(d)(1) and to rate the facility pursuant to EC Section 17002(d)(2). The tool is designed to identify areas of a school site that are in need of repair based upon a visual inspection of the site. In addition, the EC specifies the tool should not be used to require capital enhancements beyond the standards to which the facility was designed and constructed.

Good repair is defined to mean that the facility is maintained in a manner that ensures that it is clean, safe, and functional. As part of the school accountability report card, school districts and county offices of education are required to make specified assessments of school conditions including the safety, cleanliness, and adequacy of school facilities and needed maintenance to ensure good repair. In addition, beginning with the 2005/2006 fiscal year, school districts and county offices of education must certify that a facility inspection system has been established to ensure that each of its facilities is maintained in good repair in order to participate in the School Facility Program and the Deferred Maintenance Program. This tool is intended to assist school districts and county offices of education in that determination.

County superintendents are required to annually visit the schools in the county of his or her office as determined by EC Section 1240. Further, EC Section 1240(c)(2)(I), states the priority objective of the visits made shall be to determine the status of the condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by EC Section 17592.72(c) and the accuracy of data reported on the school accountability report card with the respect to the safety, cleanliness, and adequacy of school facilities, including good repair as required by EC Sections 17014, 17032.5, 17070.75, and 17089. This tool is also intended to assist county offices of education in performing these functions.

The EC also allows individual entities to adopt a local evaluation instrument to be used in lieu of the FIT provided the local instrument meets the criteria specified in EC Section 17002(d) and as implemented in the FIT. Any evaluation instrument adopted by the local educational agency for purpose of determining whether a school facility is maintained in good repair may include any number of additional items but must minimally include the criteria and rating scheme contained in the FIT.

USER INSTRUCTIONS

The FIT is comprised of three parts as follows:

Part I, Good Repair Standard outlines the school facility systems and components, as specified in EC Section 17002(d)(1), that should be considered in the inspection of a school facility to ensure it is maintained in a manner that assures it is clean, safe and functional. Each of the 15 sections in the Good Repair Standard provides a description of a minimum standard of good repair for various school facility categories. Each section also provides examples of clean, safe and functional conditions. The list of examples is not exhaustive. If an evaluator notes a condition that is not mentioned in the examples but constitutes a deficiency, the evaluator can note such deficiency in the applicable category as "other."

Some of the conditions cited in the Good Repair Standard represent items that are critical to the health and safety of pupils and staff. Any deficiencies in these items require immediate attention and, if left unmitigated, could cause severe and immediate injury, illness or death of the occupants. They constitute extreme deficiencies and indicate that the particular building system evaluated failed to meet the standard of good repair at that school site. These critical conditions are identified with underlined text followed by an (X) on the Good Repair Standard. If the underlined statement is not true, then there is an extreme deficiency (to be marked as an "X" on the Evaluation Detail) resulting in a "poor" rating for the applicable category. It is important to note that the list of extreme deficiencies noted in the Good Repair Standard is not exhaustive. Any other deficiency not included in the criteria but meeting the definition above can be noted by the evaluator and generate a poor rating.

Part II, Evaluation Detail is a site inspection template to be used to evaluate the areas of a school on a category by category basis. The design of the inspection template allows for the determination of the scope of conditions across campus. In evaluating each area or space, the user should review each of the 15 categories identified in the Good Repair Standard and make a determination of whether a particular area is in good repair. Once the determination is made, it should be recorded on the Evaluation Detail, as follows:

✓	**No Deficiency - Good Repair:** Insert a check mark if all statements in the Good Repair Standard are true, and there is no indication of a deficiency in the specific category.
D	**Deficiency:** Mark "D" if one or more statement(s) in the Good Repair Standard for the specific category is not true, or if there is other clear evidence of the need for repair.
X	**Extreme Deficiency:** Indicate "X" if the area has a deficiency that is considered an "Extreme Deficiency" in the Good Repair Standard or there is a condition that qualifies as an extreme deficiency but is not noted in the Good Repair Standard.
NA	**Not Applicable:** If the Good Repair Standard category (building system or component) does not exist in the area evaluated, mark "NA".

Below are suggested methods for evaluating various systems and areas:

- **Gas** (Section 1) and **Sewer** (Section 12) are major building systems that may span the entire school campus but may not be evident as applicable building systems in each classroom or common areas. However, because a deficiency in either of these systems could become evident and present a health and safety threat anywhere on campus, the user should not mark "NA" and should instead include an evaluation of these systems in each building space.
- **Roofs** (Section 13) can be easily evaluated for stand alone areas, such as portable classrooms. For permanent buildings containing several areas to be evaluated, roofs should be considered as parts of individual areas in order to accurately account for a scope of any roofing deficiency. For example, a 10 classroom building contains damaged gutters on one side of the building, spanning across five classrooms. Therefore, an evaluator should mark five classrooms as deficient in the roof category (Section 13) and the other five classrooms as in good repair, assuming there are no other visible deficiencies related to roofing.
- **Overall Cleanliness** (Section 15), is intended to be used to evaluate the cleanliness of each space. For example, a user should note a deficiency due to dirty surfaces in Section 15, rather than **Interior Surfaces** (Section 4). At the same time, the user should note such deficiency *only* in Section 15 in order to avoid accounting for such deficiency twice, i.e. in two sections.
- The tool is designed to evaluate stand-alone restrooms as separate areas. However, restrooms contained within other spaces, such as a kindergarten classroom or a library, can be evaluated as part of that area under Section 11. If the area evaluated does not contain a restroom, Section 11 should be marked "NA."
- **Drinking fountains** can exist within individual classrooms or areas, right outside of classrooms or restrooms or other areas, or as stand alone fixtures on playgrounds and sports fields. If a drinking fountain or a set of fountains is located inside a building or immediately outside the area being evaluated, it should be included in the evaluation of that area under Section 10. If a fountain is located on the school grounds, it should be evaluated as part of that outside space. If there is no drinking fountain in the area evaluated, Section 10 should be marked "NA."
- **Playgrounds/School Grounds** (Section 14), should be evaluated as separate areas by dividing a campus into sections with defined borders. In this case, several sections of the good repair criteria would not apply to the evaluation, as they do not exist outside of physical building areas, such as **Structural Damage** (Section 6) and **Fire Safety** (Section 7), for example.

Part III includes the **Category Totals and Ranking**, the **Overall Rating**, and a section for **Comments and Rating Explanation.**

Once the inspector completes the site inspection, he or she must total the number of areas evaluated. The inspector must also count all of the spaces deemed in good repair, deficient, extremely deficient, or not applicable under each of the 15 sections. Next, the evaluator must determine the condition of each category by taking the ratio of the number of areas deemed in good repair to the number of areas being evaluated (after subtracting non-applicable spaces from the total number of areas evaluated). If any of the 15 categories received a rating of extreme deficiency, the ratio (i.e., the percentage of good repair) for that section should default to zero.

Next, the overall school site score is determined by computing the average percentage rating of the 15 categories (i.e., the total of all percentages divided by 15). Finally, the rater should determine the overall School Rating by applying the Percentage Range in the table provided in Part III to the average percentage calculated and taking into consideration the Rating Description provided in the same table.

*Although the FIT is designed to evaluate each school site within a reasonable range of facility conditions, it is possible that an evaluator may identify critical facility conditions that result in an Overall School Rating that does not reflect the urgency and severity of those deficiencies and/or does not match the rating's Description in Part III. In such instances, the evaluator may reduce the resulting school score by one or more grade categories and describe the reasons for the reduction in the space provided for Comments and Rating Explanation.

When completing Part III of the FIT, the instructor should note the date and time of the inspection as well as weather conditions and any other pertinent inspection information in the specific areas provided and utilize the Comments and Rating Explanation Section if needed.

PART I: GOOD REPAIR STANDARD

(X): If underlined statement is not true, then this is an extreme deficiency (marked as an "X") on the Evaluation Detail resulting in a "poor" rating for the applicable category.

1. Gas Leaks

Gas systems and pipes appear safe, functional, and free of leaks. Examples include but are not limited to the following:

a. There is no odor that would indicate a gas leak. (X)
b. Gas pipes are not broken and appear to be in good working order. (X)
c. Other:

2. Mechanical Systems

Heating, ventilation, and air conditioning systems (HVAC) as applicable are functional and unobstructed. Examples include but are not limited to the following:

a. The HVAC system is operable. (X)
b. The facilities are ventilated (via mechanical or natural ventilation).
c. The ventilation units are unobstructed and vents and grills are without evidence of excessive dirt or dust.
d. There appears to be an adequate air supply to all classrooms, work spaces, and facilities (i.e. no strong odor is present, air is not stuffy).
e. Interior temperatures appear to be maintained within normally accepted ranges.
f. The ventilation units are not generating any excessive noise or vibrations.
g. Other:

3. Windows/Doors/Gates/Fences (Interior and exterior)

Conditions that pose a safety and/or security risk are not evident. Examples include but are not limited to the following:

a. There is no exposed broken glass accessible to pupils and staff. (X)
b. Exterior doors and gates are functioning and do not pose a security risk. (X)
c. Windows are intact and free of cracks.
d. Windows are functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.
e. Doors are intact.
f. Doors are functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.
g. Gates and fences appear to be functional.
h. Gates and fences are intact and free of holes and other conditions that could present a safety hazard to pupils, staff, or others.
i. Other:

4. Interior Surfaces (Floors, Ceilings, Walls, and Window Casings)

Interior surfaces appear to be clean, safe, and functional. Examples include but are not limited to the following:

a. Walls are free of hazards from tears and holes.
b. Flooring is free of hazards from torn carpeting, missing floor tiles, holes.
c. Ceiling is free of hazards from missing ceiling tiles and holes.
d. There is no evidence of water damage (e.g. no condensation, dampness, staining, warping, peeling,mineral deposits, etc.)
e. Other:

5. Hazardous Materials (Interior and Exterior)

There does not appear to be evidence of hazardous materials that may pose a threat to pupils or staff. Examples include but are not limited to the following:

a. Hazardous chemicals, chemical waste, and flammable materials are stored properly (e.g. locked and labeled properly). (X)
b. Paint is not peeling, chipping, or cracking.
c. There does not appear to be damaged tiles or other circumstances that may indicate asbestos exposure.
d. Surfaces (including floors, ceilings, walls, window casings, HVAC grills) appear to be free of mildew, mold odor and visible mold.
e. Other

6. Structural Damage

There does not appear to be structural damage that has created or could create hazardous or uninhabitable conditions. Examples include but are not limited to the following:

a. Severe cracks are not evident. (X)
b. Ceilings & floors are not sloping or sagging beyond their intended design. (X)
c. Posts, beams, supports for portable classrooms, ramps, and other structural building members appear to be intact, secure and functional as designed. (X)
d. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines the structural components. (X)
e. Other:

7. Fire Safety

The fire equipment and emergency systems appear to be functioning properly. Examples include but are not limited to the following:

a. The fire sprinklers appear to be in working order (e.g., there are no missing or damaged sprinkler heads). (X)
b. Emergency alarms appear to be functional. (X)
c. Emergency exit signs function as designed, exits are unobstructed. (X)
d. Fire extinguishers are current and placed in all required areas.
e. Fire alarms pull stations are clearly visible.
f. Other:

8. Electrical (Interior and Exterior)

1. *There is no evidence that any portion of the school has a power failure.* (X)

2. *Electrical systems, components, and equipment appear to be working properly. Examples include but are not limited to the following:*

a. There are no exposed electrical wires. Electrical equipment is properly covered and secured from pupil access. (X)
b. Outlets, access panels, switch plates, junction boxes and fixtures are properly covered and secured from pupil access.
c. Other

3. *Lighting appears to be adequate and working properly, including exterior lights. Examples include but are not limited to the following:*

a. Lighting appears to be adequate.
b. Lighting is not flickering.
c. There is no unusual hum or noise from the light fixtures.
d. Other

9. Pest/Vermin Infestation

Pest or vermin infestation are not evident. Examples include but are not limited to the following:

a. There is no evidence of a major pest or vermin infestation. (X)
b. There are no holes in the walls, floors, or ceilings.
c. Rodent droppings or insect skins are not evident.
d. Odor caused by a pest or vermin infestation is not evident.
e. There are no live rodents observed.
f. Other

10. Drinking Fountains (Inside and Outside)

Drinking fountains appear to be accessible and functioning as intended. Examples include but are not limited to the following:

a. Drinking fountains are accessible.
b. Water pressure is adequate.
c. A leak is not evident.
d. There is no moss, mold, or excessive staining on the fixtures.
e. The water is clear and without unusual taste or odor.
f. Other

11. Restrooms

Restrooms in the vicinity of the area being evaluated appear to be accessible during school hours, clean, functional and in compliance with SB 892 (EC Section 35292.5). The following are examples of compliance with SB 892:

a. Restrooms are maintained and cleaned regularly.
b. Restrooms are fully operational.
c. Restrooms are stocked with toilet paper, soap, and paper towels.
d. Restrooms are open during school hours.
e. Other

12. Sewer

Sewer line stoppage is not evident. Examples include but are not limited to the following:

a. There are no obvious signs of flooding caused by sewer line back-up in the facilities or on the school grounds. (X)
b. The sanitary system controls odors as designed.
c. Other

13. Roofs (observed from the ground, inside/outside the building)

Roof systems appear to be functioning properly. Examples include but are not limited to the following:

a. Roofs, gutters, roof drains, and down spouts are free of visible damage.
b. Roofs, gutters, roof drains, and down spouts are intact.
c. Other:

14. Playground/School Grounds

The playground equipment and school grounds in the vicinity of the area being evaluated appear to be clean, safe, and functional. Examples include but are not limited to the following:

a. Significant cracks, trip hazards, holes and deterioration are not found.
b. Open "S" hooks, protruding bolt ends, and sharp points/edges are not found in the playground equipment.
c. Seating, tables, and equipment are functional and free of significant cracks.
d. There are no signs of drainage problems, such as flooded areas, eroded soil, water damage to asphalt, or clogged storm drain inlets.
e. Other

15. Overall Cleanliness

School grounds, buildings, common areas, and individual rooms appear to have been cleaned regularly. Examples include but are not limited to the following:

a. Area(s) evaluated is free of accumulated refuse, dirt, and grime.
b. Area(s) evaluated is free of unabated graffiti.
c. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each day that school is in session.
d. Other:

STATE OF CALIFORNIA

FACILITY INSPECTION TOOL

SCHOOL FACILITY CONDITIONS EVALUATION

(NEW 06/07)

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

PART II: EVALUATION DETAIL

Date of Inspection: ________ School Name: ________ Page ____ of ____

AREA	SECTION 1 GAS LEAKS	SECTION 2 MECH/HVAC	SECTION 3 WINDOWS/ DOORS GATES/FENCES	SECTION 4 INTERIOR SURFACES	SECTION 5 HAZARDOUS MATERIALS	SECTION 6 STRUCTURAL DAMAGE	SECTION 7 FIRE SAFETY	SECTION 8 ELECTRICAL	SECTION 9 PEST/VERMIN INFESTATION	SECTION 10 DRINKING FOUNTAINS	SECTION 11 RESTROOMS	SECTION 12 SEWER	SECTION 13 ROOFS	SECTION 14 PLAYGROUND/ SCHOOL GROUNDS	SECTION 15 OVERALL CLEANLINESS
	COMMENTS:														
	COMMENTS:														
	COMMENTS:														
	COMMENTS:														
	COMMENTS:														
	COMMENTS:														
	COMMENTS:														

Marks: ✓ = Good Repair; **D** = Deficiency; **X** = Extreme Deficiency; **NA**= Not Applicable
Use additional sheets as necessary

SCHOOL DISTRICT/COUNTY OFFICE OF EDUCATION		COUNTY	
SCHOOL SITE		SCHOOL TYPE (GRADE LEVELS)	NUMBER OF CLASSROOMS ON SITE
INSPECTOR'S NAME	INSPECTOR'S TITLE	NAME OF DISTRICT REPRESENTATIVE ACCOMPANYING THE INSPECTOR(S) (IF APPLICABLE)	
TIME OF INSPECTION	WEATHER CONDITION AT TIME OF INSPECTION		

PART III: CATEGORY TOTALS AND RANKING

TOTAL NUMBER OF AREAS EVALUATED ↓	CATEGORY TOTALS	SECTION 1 GAS LEAKS	SECTION 2 MECH/HVAC	SECTION 3 WINDOWS/ DOORS GATES/FENCES	SECTION 4 INTERIOR SURFACES	SECTION 5 HAZARDOUS MATERIALS	SECTION 6 STRUCTURAL DAMAGE	SECTION 7 FIRE SAFETY	SECTION 8 ELECTRICAL	SECTION 9 PEST/VERMIN INFESTATION	SECTION 10 DRINKING FOUNTAINS	SECTION 11 RESTROOMS	SECTION 12 SEWER	SECTION 13 ROOFS	SECTION 14 PLAYGROUND/ SCHOOL GROUNDS	SECTION 15 OVERALL CLEANLINESS
	Number of "✓"s:															
	Number of "D"s:															
	Number of "X"s:															
	Number of "NA"s:															
Percent of System in Good Repair Number of "✓"s divided by (Total Areas – "NA"s)																
Rank (Circle One) Good = 85%–100% Fair = 67%–84.99% Poor = 0%–66.99%		GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR	GOOD FAIR POOR

Note: An extreme deficiency in any section automatically results in a "poor" ranking for that category and a zero for "Percent of System in Good Repair."

OVERALL RATING: DETERMINE AVERAGE PERCENTAGE OF 15 CATEGORIES ABOVE → SCHOOL RATING* →

*For School Rating, apply the Percentage Range below to the average percentage determined above, taking into account the rating Description below.

PERCENTAGE	DESCRIPTION	RATING
98%–100%	The school meets most or all standards of good repair. Deficiencies noted, if any, are not significant and/or impact a very small area of the school.	Exemplary
85%–97.99%	The school is maintained in good repair with a number of non-critical deficiencies noted. These deficiencies are isolated, and/or resulting from minor wear and tear, and/or in the process of being mitigated.	Good
67%–84.99%	The school is not in good repair. Some deficiencies noted are critical and/or widespread. Repairs and/or additional maintenance are necessary in several areas of the school site.	Fair
0%–66.99%	The school facilities are in poor condition. Deficiencies of various degrees have been noted throughout the site. Major repairs and maintenance are necessary throughout campus.	Poor

COMMENTS AND RATING EXPLANATION: _____

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
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3841 North Freeway Blvd., Suite 170
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Telephone: (916) 565-6104
Fax: (916) 564-6103

July 2, 2008

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

Re: Test Claim of San Diego County Office of Education
and the Sweetwater Union High School District
Statutes of 2007, Chapter 526
Williams Case Implementation III

Dear Ms. Higashi:

Enclosed is the original and seven copies of the above referenced test claim.

I have been appointed by the test claimants as their representative for this test claim. The test claimants request that all correspondence originating from your office and documents subject to service by other parties be directed to me, with a copy to:

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7399

Dianne L. Russo, Chief Fiscal Officer
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896

This test claim is filed with the endorsement of the Education Mandated Cost Network, so Robert Miyashiro, EMCN Consultant, and Patrick Day, EMCN Chair, should be included as interested parties for future correspondence. I have already provided them copies of the test claim material.

The following state agencies may have an interest in this test claim:

State Department of Education
State Allocation Board and Office of Public School Construction

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education
Dianne L. Russo, Chief Fiscal Officer
Sweetwater Union High School District
Robert Miyashiro, School Services of California
Patrick Day, San Jose Unified School District

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

1. TEST CLAIM TITLE

Williams Case Implementation III

Supplement to:
Williams Case Implementation (05-TC-04)
Williams Case Implementation II (07-TC-06)

2. CLAIMANT INFORMATION

San Diego County Office of Education
Lora Duzyk
Assistant Superintendent Business Services
6401 Linda Vista Road
San Diego, CA 92111-7399
Voice: 858-292-3618
Fax: 858-541-0697
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Sweetwater Union High School District
Dianne L. Russo
Chief Fiscal Officer
1130 Fifth Avenue
Chula Vista, CA 91911-2896
Voice: 619-691-5550
Fax: 619-425-3394
E-Mail: dianne.russo@suhsd.k12.ca.us

3. CLAIMANT REPRESENTATIVE INFORMATION

The claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim will be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen
President
SixTen and Associates
3841 N. Freeway Blvd.; Suite 170
Sacramento, CA 95834
Phone: (916) 565-6104
Fax: (916) 564-6103
E-mail: Kbpsixten@aol.com

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Filing Date:
JUL 07 2008
COMMISSION ON STATE MANDATES
Test Claim #: 08-TC-07

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS

STATUTES

Statutes of 2007, Chapter 526 (AB 347), effective October 12, 2007

EDUCATION CODE SECTIONS

1240 35186

REGULATIONS

Title 2, Sections 1859.300 through 1859.330, Register 2007 No. 51

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, 7, and 8 are attached as follows:

5. Written Narrative:	pages 1 to 18
6. Declarations:	See Exhibit A
7. Documentation:	See Exhibit B
8. Claim Certification:	Located after page 18

5. WRITTEN NARRATIVE

First Test Claim

On September 16, 2005, the San Diego County Office of Education and the Sweetwater Union High School District submitted a test claim entitled "Williams Case Implementation." By letter dated October 3, 2005, the Commission on State Mandates accepted the test claim. That test claim (05-TC-04) alleges mandated costs reimbursable by the state for school districts and county offices of education ("school districts") to implement the legislation which resulted from the settlement of the "Williams" court case.

Second Test Claim

On December 14, 2007, the San Diego County Office of Education and the Sweetwater Union High School District submitted a test claim entitled "Williams Case Implementation II." By letter dated December 21, 2007, the Commission on State Mandates accepted the test claim. That test claim (07-TC-06) supplements the prior test claim for changes and additions to statutes, regulations, and executive orders.

Third Test Claim

This third test claim supplements the prior two test claims for changes and additions to statutes. The statutes, Education and other Code sections, and regulations referenced in this test claim require school districts and county offices of education to incur costs mandated by the state, as defined in Government Code section 17514, by creating new state-mandated duties related to the uniquely governmental function of providing services to the public. These new requirements apply to school districts and do not apply generally to all residents and entities in the state. County offices of

education (the County Superintendent of Schools) incur costs mandated by the state for the required monitoring and oversight of the intensive instruction and services for eligible recipients.

PART A. ACTIVITIES AND COSTS

SECTION 1. STATUTORY MANDATES

Statutes of 2007, Chapter 526, Assembly Bill 347

Statutes of 2007, Chapter 526, Assembly Bill 347, effective October 12, 2007, makes the following changes:

Education Code Section	Action
1240	amended
35186	amended
37254	amended (unrelated subject matter)
52378	amended (unrelated subject matter)
52380	amended (unrelated subject matter)

and makes an appropriation therefor.

Legislative Digest

(1) Subject matter not included in this test claim.

(2) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. A notice regarding the appropriate

subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee.

This bill requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. The bill would also require the notice, for certain classrooms, to include certain information about the entitlement to receive the intensive instruction and services, and would require a complaint regarding any deficiency related to intensive instruction and services to be submitted to the district official designated by the district superintendent. By imposing additional duties on school districts, this bill would impose a state-mandated local program.

(3) Subject matter not included in this test claim.

(4) Existing law requires a county superintendent of schools to undertake specified duties regarding the oversight of the school districts within his or her jurisdiction. This bill requires a county superintendent of schools to perform additional duties related to conducting school visits and verifying that pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to 2 consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the exit examination, whichever comes first and verifying that those pupils who elected to receive the instruction and services are being served. By imposing additional duties on local

educational agencies or officials, the bill imposes a state-mandated local program.

(5) This bill makes other technical, nonsubstantive changes to existing law.

(6) Subject matter not included in this test claim.

(7) This bill would provided, 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

(8) This bill makes an appropriation by specifying a new purpose for the use of $1.5 million of funds that would be appropriated to the State Department of Education in the Budget Act of 2007 for allocation to county offices of education, and those funds are applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(9) This bill is effective October 12, 2007, as an urgency statute.

Activities and Costs

Education Code, Section 1240, subdivision (c), paragraph (1)

Education Code Section 1240(c)(1), is amended to make the following technical correction to the second sentence: "He or she ~~may~~ annually may present . . . "

Education Code, Section 1240, subdivision (c), paragraph (2), subparagraph (A)

Education Code Section 1240 (c)(2)(A), is amended to make the following technical changes:

- In the first sentence the words "shall annually" are restated as "annually shall."
- The cross reference to the previous subparagraph (I) is changed to subparagraph (J).

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (B)

Education Code Section 1240 (c)(2)(B), is amended to make the following technical changes:

- In the first sentence the words "shall annually" are restated as "annually shall."
- The cross reference to the previous subparagraph (I) is changed to subparagraph (J).
- In the last sentence: ". . . on the 2006 base API shall include ~~any~~ schools determined by the department."

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (C)

Education Code Section 1240 (c)(2)(c), is amended to make the following technical corrections in the first sentence:

- Delete the words "of paragraph (2)" where they previously appeared.
- Replace the word "testing" with the word "test."
- Delete the word "any" which preceded the word "weighting."

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (D)

Education Code Section 1240 (c)(2)(D), is amended to delete the word "any," which preceded the words "schools operated by county offices of education."

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (E)

Education Code Section 1240 (c)(2)(E), is amended to require the county office of education to annually verify both of the following:

(i) That pupils who have not passed the high school exit examination by the end of

grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(ii) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (F)

Education Code Section 1240 (c)(2)(F), is amended to make the following technical changes:

- The subparagraph is renamed from (E) to (F).
- In Item (i) the words "shall annually" are restated as "annually shall."
- In Item (iii), the cross reference to the previous subparagraph (I) is changed to subparagraph (J).

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (G)

Education Code Section 1240(c)(2)(G), is amended to make the following technical changes:

- The subparagraph is renamed from (F) to (G).
- The word "and" is inserted before the word "Sierra."

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Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (H)

Education Code Section 1240 (c)(2)(H), is amended to make the following technical changes:

- The subparagraph is renamed from (G) to (H).
- The cross reference to the previous subparagraph (I) is changed to subparagraph (J).

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (I)

Education Code Section 1240 (c)(2)(I) is renamed subparagraph (I) from (H).

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (J)

Education Code Section 1240 (c)(2)(J) is renamed subparagraph (J) from subparagraph (I).

New Item (iv) is added to require a new priority objective of the site visits to verify that those pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

New item (v) is added to require a new priority objective of the site visits to verify that those pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (K)

Education Code Section 1240 (c)(2)(K), is amended to make the following technical changes:

- The subparagraph is renamed from (K) from (J).
- The cross reference to the previous subparagraph (I) is changed to subparagraph (J).

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (L)

Education Code 1240 (c)(2)(L), is amended to make the following technical changes:

- The subparagraph is renamed (L) from (K).
- The word "may" is deleted preceding the words "among other things" and the word " may" is added preceding "do any of the following."
- At Item (ii), the words "the county superintendent's visit" are replaced with "visit of the county superintendent," and the word "its" is deleted and changed to "his or her" preceding the words "Internet Web site."

Education Code Section 1240, subdivision (e)

Education Code Section 1240 (e) is amended to delete the words "at any time" preceding the words " to be in a position of fiscal uncertainty."

Education Code Section 1240, subdivision (g)

Education Code Section 1240 (g), is amended to delete the word "any" and insert the word "an" preceding the word "applicant."

Education Code Section 1240, subdivision (i), paragraph (3), subparagraph (A)

Education Code Section 1240 (i) (3) (A), is amended to:

- Delete the words "of the 2003" immediately preceding the words "base API."
- Replace the words "(b) of Section 17592.70 " with "specified in paragraph 2 of subdivision (c)" immediately following the words "base API."
- Reverse the words "shall specifically" to "specifically shall" preceding the words "review the school at least annually as a priority school."

Education Code Section 1240, subdivision (i), paragraph (3), subparagraph (B)

Education Code Section 1240 (i) (3) (B) is amended to:

- Delete the words "of schools" preceding the words " in a county of 200 or more."
- Delete "2003" preceding the words "base API."
- Replace the words "(b) of Section 17592.70" with "specified in paragraph 2 of subdivision (c)" following the words "base API."
- Delete the words "of schools" preceding the words "elects to conduct."

Education Code Section 1240, subdivision (i), paragraph (3), subparagraph (D)

Education Code Section 1240 (i) (4) (D), is amended to replace the words "county superintendent's request" and with "request of the county superintendent."

Education Code Section 1240, subdivision (l), paragraph (1)

Education Code Section 1240 (l) (1) (A), is amended to delete the words "of schools" following the words "county superintendent." Education Code Section 1240 (l) (1) (B), is amended to replace the word "any" with the word "a" preceding the words

"county office" in three different sentences and preceding the word "certification" in the sixth sentence.

Education Code Section 1240, subdivision (l), paragraph (2)

Education Code Section 1240 (l) (2), is amended to delete the words "of Education" following the words "state board" and to replace the word "any" with the word "an" preceding the words "interested party."

Education Code Section 1240, subdivision (l), paragraph (4)

Education Code Section 1240 (l) (4), is amended to delete the words "of schools" following the words "county superintendent."

Education Code Section 1240, subdivision (n)

Education Code Section 1240 (n), is amended to make the following technical changes:

- Delete the word "any" and add the word "a" preceding the words "certificated person."
- Delete the word "any" and add the word "an" preceding the words "educational program" in two places.
- Delete the words "of schools" following the words "county superintendent."

Education Code Section 35816, subdivision (a)

Education Code Section 35816(a), is amended to increase the scope of the discrimination complaint process to include the intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts

of the high school exit examination after the completion of grade 12.

Paragraph (3) is amended to except this new subject matter from the existing process of filing the complaint first with the principal.

New paragraph (4) requires that a complaint regarding any deficiencies related to intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12 shall be submitted to the district official designated by the district superintendent.

Education Code Section 35816, subdivision (c)

Education Code Section 35816(c), is amended to delete the words "of Education" following the words "state board."

Education Code Section 35186, subdivision (e)

Education Code Section 35186(e), is amended to add new paragraph (4), which requires that the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, is added to the scope of the process.

Education Code Section 35186, subdivision (f)

Education Code section 35186 (f) is amended to add new paragraph (4) which adds the intensive instruction and services new subject matter to the classroom notice regarding the complaint process. Previous paragraph (4) is renumbered as paragraph (5).

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SECTION 2. REGULATORY MANDATES

Regulations

Title 2, Sections 1859.300 through 1859.330

The State Allocation Board adopted Title 2 regulations (Register 2005, No. 45) on November 7, 2005, which certified emergency regulations (Register 2005, No. 22) adopted May 31, 2005, which were the subject of the first test claim. These regulations are located at Title 2, Sections 1859.300 through 1859.330, and are titled "School Facilities Needs Assessment and Emergency Repair Program."

Since then, the Board has adopted additional emergency regulations (Register 2007, No. 27) operative July 2, 2007, to implement the facilities portion of Statutes of 2007, Chapter 704, which were the subject of the second test claim. A Certificate of Compliance was transmitted to the Office of Administrative Law on December 18, 2007 (Register 2007, No. 51). No changes have been made to the regulations after Register 2007, No. 51.

Executive Orders

No substantive changes have been made to forms listed in the first and second test claim.

PART B. COST ESTIMATES

SECTION 1. TEST CLAIMANTS' COST ESTIMATE

The estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for San Diego County Office of Education and exceed one thousand dollars

($1,000) for Sweetwater Union High School District. See the Declarations in Exhibit A.

SECTION 2. STATEWIDE COST ESTIMATE

The statewide cost estimate for this test claim relies upon the FY 2004-05 data collected for the original Williams Case Implementation (WCI-1) test claim (05-TC-04) for the extrapolation of the estimated FY 2007-08 and FY 2008-09 costs of this test claim. The WCI-I statewide cost estimate was based on voluntary responses to a survey questionnaire prepared by the test claimants. The responses from school districts represented about 10% of the Williams Decile 1-3 enrollment. The responses from county offices of education represented about 23% of the Williams Decile 1-3 enrollment. The responses were extrapolated based on the ratio of the survey statistics to total statewide statistics.

School Districts (K-12)

The FY 2007-08 and FY 2008-09 statewide cost extrapolation for school districts for this test claim is based on the estimated costs for the Sweetwater Union High School District to implement the mandated activities, divided by the percentage that Sweetwater Union High School District's estimated FY 2004-05 WCI-I Implementation costs represented to the total FY 2004-05 amounts reported by the WCI-I survey, divided by the percentage of school districts responding to the WCI-I survey.

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05-TC-04 Williams Case Implementation

K-12 School District Survey Costs Reported for FY 2004-05

	Activity	Total	Sweetwater
1	Preparing to Implement Mandate-Ongoing	$132,310	$21,367
2	Facilities Inspection: One-time	96,938	1,339
3	Instructional Materials-Annual	138,890	14,182
4	Teacher Assignments-Ongoing	84,160	8,828
5	SARC-One-time	109,270	no data
6	Uniform Complaint Procedure-Ongoing	61,460	2,605
7	Financial and Compliance Audits-Ongoing	10,710	513
8	School Facility Needs Assessment-One-time	63,510	no data
9A	Preparing for COE Reviews-Annual	107,820	9,881
9B	Participating in the COE Reviews-Annual	39,900	1,625
9C	Remediation after COE Reviews-Annual	62,710	0
	Statewide Totals (K-12)	$907,678	$60,340

A. The WCI-I total reported survey costs for school districts for FY 2004-05 were $907,678. The estimated amount reported by the test claimant Sweetwater Union High School District for FY 2004-05 was $60,340. Therefore, the Sweetwater Union High School District costs represent about 7% of the statewide survey costs ($60,340 divided by $907,678 = 6.65%, rounded to 7%).

B. The estimated costs for the Sweetwater Union High School District for this test claim for FY 2007-08 are $2,050 (see the declaration attached as Exhibit "A").

The imputed total statewide survey costs for FY 2007-08 would then be $29,300 ($2,050 divided by 7% = $29,286, rounded to $29,300). The estimated costs for the Sweetwater Union High School District for this test claim for FY 2008-09 are $2,000 (see the declaration attached as Exhibit "A"). The imputed total statewide survey costs for FY 2008-09 would then be $28,600 ($2,000 divided by 7% = $28,571, rounded to $28,600).

C. The number of school districts responding to the WCI-I test claim represented about 10% of the Decile 1-3 enrollment. The extrapolated statewide costs for FY 2007-08 would then be $293,000 ($29,300 divided by 10% = $293,000), and for FY 2008-09 $286,000 ($28,600 divided by 10% = $286,000).

County Offices of Education

The FY 2007-08 and FY 2008-09 statewide cost extrapolation for county offices of education for this test claim is based on the estimated cost for the San Diego County Office of Education to implement the mandated activities, divided by the percentage that the San Diego County Office of Education's estimated FY 2004-05 WCI-I Implementation costs represented to the total FY 2004-05 amounts reported by the WCI-I survey, divided by the percentage of county offices of education responding to the WCI-I survey.

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05-TC-04 Williams Case Implementation

County Office Survey Costs Reported for FY 2004-05

	Activity	Total	San Diego COE
1	Preparing to Implement Mandate-Ongoing	$184,029	$82,100
2	Teacher Assignments-Ongoing	94,070	8,600
3	Uniform Complaint Procedure-Ongoing	12,010	700
4	Financial and Compliance Audits-Ongoing	4,640	no data
5A	Preparing for Onsite Visits-Annual	206,820	25,500
5B	Conducting the Onsite Visit-Annual	305,160	52,900
5C	Reports and Monitoring-Annual	121,160	15,200
	Statewide Totals (COE)	$927,889	$185,000

A. The WCI-I total reported survey costs for county offices of education (COE) for FY 2004-05 were $927,889. The estimated amount reported by the test claimant San Diego County Office of Education for FY 2004-05 was $185,000. Therefore, the San Diego County Office of Education costs represent about 20% of the statewide survey costs ($185,000 divided by $927,889 = 19.93%, rounded to 20%).

B. The estimated costs for the San Diego County Office of Education for this test claim for FY 2007-08 are $9,000 (see the declaration attached as Exhibit "A"). The imputed total statewide survey costs for FY 2007-08 would then be $45,000 ($9,000 divided by 20% = $45,000). The estimated costs for the San Diego County Office of Education for this test claim for FY 2008-09 are $7,500 (see

the declaration attached as Exhibit "A"). The imputed total statewide survey costs for FY 2008-09 would then be $37,500 ($7,500 divided by 20% = $37,500).

C. The number of county offices of education responding to the WCI-I test claim represented about 23% of the Decile 1-3 enrollment. The extrapolated statewide costs for FY 2007-08 would then be $393,500 ($45,000 divided by 23% = $195,652, rounded to $195,700). The extrapolated statewide costs for FY 2008-09 would then be $163,000 ($37,500 divided by 23% = $163,043, rounded to $163,000).

Extrapolated Estimated Statewide Costs

	FY2007-08	FY 2008-09
K-12 School Districts	$293,000	$286,000
County Offices of Education	$195,700	$163,000
Total	$488,700	$449,000

Subsequent fiscal year costs are anticipated to be about the same.

PART C. FUNDING SOURCES

1. State Funds

Section 8 of Statutes of 2007, Chapter 526, states by specifying a new purpose for the use of the $1.5 million of funds that would be appropriated to the State Department of Education in the Budget Act of 2007 for allocation to county officers of education, the bill makes an appropriation.

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2. Federal Funds

There are no funds specifically appropriated for the implementation of the mandate.

3. Non-local Agency Funds

There are no funds specifically appropriated for the implementation of the mandate.

4. Local Agency General Purpose Funds

There are no funds specifically appropriated for the implementation of the mandate.

5. Fee authority to offset costs

There is no fee authority for the implementation of the mandate.

PART D. RELEVANT MANDATE DETERMINATIONS

The test claim legislation includes activities that are the subject matter of other test claims in process:

03-TC-02	Uniform Complaint Procedures
05-TC-04	Williams Case Implementation
07-TC-06	Williams Case Implementation II

6. DECLARATIONS

Attached as Exhibit "A"

7. DOCUMENTATION

Exhibit A	Declarations: -Charmaine Lawson, Coordinator, District and School Improvement, Williams Settlement Coordination, San Diego County Office of Education -Declaration of Karen Janney, Assistant Superintendent, Academic Growth and Development, Sweetwater Union High School District
Exhibit B	Statutes of 2007, Chapter 526 (AB 347)
Exhibit C	Title 2, Sections 1859.300 through 1859.330

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

Dianne Russo — 6-19-08

Dianne L. Russo, Chief Fiscal Officer — Date
Sweetwater Union High School District

APPOINTMENT OF REPRESENTATIVE

The Sweetwater Union High School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Dianne Russo — 6-19-08

Dianne L. Russo, Chief Fiscal Officer — Date
Sweetwater Union High School District

COMMISSION ON STATE MANDATES TEST CLAIM FORM

(Pursuant to Government Code Section 17553)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education

6-27-08
Date

APPOINTMENT OF REPRESENTATIVE

The San Diego County Office of Education appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Lora Duzyk, Assistant Superintendent Business Services
San Diego County Office of Education

6-27-08
Date

Document	Pages	Total Pages
Declaration of Charmaine Lawson, Coordinator District and School Improvement Williams Settlement Coordination San Diego County Office of Education	1-8	8
Declaration of Karen Janney, Assistant Superintendent Academic Growth and Development Sweetwater Union High School District	1-7	7

Exhibit A DECLARATIONS

DECLARATION OF CHARMAINE LAWSON

SAN DIEGO COUNTY OFFICE OF EDUCATION

WILLIAMS CASE IMPLEMENTATION III

Test Claim of San Diego County Office of Education

and Sweetwater Union High School District

STATUTES

Statutes of 2007, Chapter 526 (AB 347), effective October 12, 2007

EDUCATION CODE SECTIONS

1240 35186

REGULATIONS

Title 2, Sections 1859.300 through 1859.330, Register 2007 No. 51

Declaration and Statement

I, Charmaine Lawson, Coordinator, District and School Improvement, Williams Settlement Coordination, San Diego County Office of Education, make the following declaration and statement.

In my capacity as Coordinator, District and School Improvement, Williams Settlement Coordination, I am the administrative official responsible for the implementation of the Williams Case Implementation III mandate legislation by the San Diego County Office of Education. I am familiar with the provisions and requirements of the statutes and Education Code. These new laws and regulations result in increased costs to, and a new level of service for, the San Diego County Office of Education for the required monitoring and oversight of school districts within the jurisdiction of the San

Diego County Office of Education that implement the Williams case legislation, as well as increased costs to, and a new level of service for, the San Diego County Office of Education in its capacity as a local education agency that operates schools as a "school district." This declaration is limited to the new activities and costs required for monitoring and oversight of the school districts within the jurisdiction of the San Diego County Office of Education. The Sweetwater Union High School District declaration includes the activities required of a local education agency that operates schools.

PART 1. NEW PROGRAM AND INCREASED LEVEL OF SERVICES

The new Williams Case Implementation III mandate legislation results in increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel, to implement the following activities:

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (E)

Education Code Section 1240 (c)(2)(E), as amended, requires that the county office of education to annually verify both of the following:

(i) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of

Section 37254.

(ii) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (J)

As amended, new Item (iv) adds a new priority objective of the site visits to verify that those pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

New item (v) adds a new priority objective of the site visits to verify that those pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

Education Code Section 35816, subdivision (a)

Education Code Section 35816(a), as amended, increases the scope of the discrimination complaint process to include the intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. Paragraph (3) is amended to except this new subject matter from the existing process of filing the

complaint first with the principal. New paragraph (4) requires that a complaint regarding any deficiencies related to intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12 shall be submitted to the district official designated by the district superintendent.

Education Code Section 35186, subdivision (e)

Education Code Section 35186(e), as amended, adds new paragraph (4) which requires that the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, is added to the scope of the complaint process.

Education Code Section 35186, subdivision (f)

Education Code section 35186 (f), as amended, adds new paragraph (4) which adds the intensive instruction and services subject matter to the classroom notice regarding the complaint process.

PART 2. COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for the San Diego County Office of Education.

1. IMPLEMENTING MANDATE AMENDMENTS

Policies, Procedures, Planning, Training: Staff time amending previous policies and procedures to incorporate changes made to the program and forms, and training school

district and county office staff to implement the mandate.

Estimated Costs October 2007 through June 2008 $ 4,000

Estimated Costs July 2008 through June 2009 $ 2,000

2. COUNTY OFFICE INSPECTIONS OF WILLIAMS DECILES 1-3 SCHOOLS

HIGH SCHOOL EXIT EXAM

Staff time to verify compliance and include in the school field inspection report to the school district governing boards, pursuant to Section 1240 (c)(2)(E) and (J), the determinations from the inspections:

(1) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(2) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

Estimated Costs October 2007 through June 2008 $4,500

Estimated Costs July 2008 through June 2009 $4,500

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UNIFORM COMPLAINT PROCEDURE

Staff time to verify compliance and include in the school field inspection report to the school district governing boards, pursuant to Section 35816, the determinations from the inspections:

(1) That the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, is added to the scope of the process.

(2) That the subject matter of the intensive instruction and services is added to the classroom notice regarding the complaint process. .

(3) That a complaint regarding any deficiencies related to intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12 was submitted to the district official designated by the district superintendent.

Estimated Costs October 2007 through June 2008	$ 500
Estimated Costs July 2008 through June 2009	$1,000

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TOTAL COST ESTIMATE AMOUNT October 2007 through June 2008	$9,000
TOTAL COST ESTIMATE AMOUNT July 2008 through June 2009	$7,500

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PART 3. FUNDING SOURCES

1. State Funds

Section 8 of Statutes of 2007, Chapter 526, allocates $1.5 million of the funds appropriated to the State Department of Education in the Budget Act of 2007 for allocation to county offices of education for purpose of implementing Education Code Section 1240. However, none of these funds have been specifically identified as applicable to the increased activities required by Statutes of 2007, Chapter 526.

2. Other funds

No federal funds have been received by the county office of education, or are receivable, which were specifically appropriated to implement this mandate. No other state or local monies were received by the county office of education, or are receivable, which were specifically appropriated to implement this mandate. No federal, state, local government, or private grants or awards have been received by the county office of education, or are receivable, which were specifically designated to implement this mandate. There is no authority in federal, state, or local law for this county office of education to levy fees to offset the costs to implement this mandate.

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CERTIFICATION

I hereby declare under penalty of perjury under the laws of the State of California that the information in this declaration is true and complete to the best of my own knowledge or information or belief.

EXECUTED this 23 day of June 2008, at San Diego, California

Charmaine Lawson, Coordinator
District and School Improvement
Learning Resources and Educational Technology
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7399
Voice: 858-292-3518
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E-Mail: clawson@sdcoe.net

DECLARATION OF KAREN JANNEY
SWEETWATER UNION HIGH SCHOOL DISTRICT

WILLIAMS CASE IMPLEMENTATION III

Test Claim of San Diego County Office of Education
and Sweetwater Union High School District

STATUTES

Statutes of 2007, Chapter 526 (AB 347), effective January 1, 2007

EDUCATION CODE SECTIONS

1240 35186

REGULATIONS

Title 2, Sections 1859.300 through 1859.330, Register 2007 No. 51

Declaration and Statement

I, Karen Janney, Assistant Superintendent, Academic Growth and Development, Sweetwater Union High School District, make the following declaration and statement.

In my capacity as Assistant Superintendent, Academic Growth and Development, I am the administrative official responsible for the implementation of the Williams Case Implementation mandate legislation by the school district. I am familiar with the provisions and requirements of the statute and Education Code sections enumerated above. These new laws and regulations result in increased costs to, and a new level of service for, school districts and county offices of education (in their capacity as a local education agency which operates schools as a "school district"), to implement the Williams Case legislation.

PART 1. NEW PROGRAM AND INCREASED LEVEL OF SERVICES

The new Williams Case Implementation III mandate legislation results in increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel, to implement the following activities:

Education Code Section 1240, subdivision (c), paragraph (2), subparagraph (E)

Education Code Section 1240 (c)(2)(E), as amended, requires that the county office of education verify that school districts annually inform pupils who have not passed the high school exit examination by the end of grade 12 that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, and that these services are provided.

Education Code Section 35816, subdivision (a)

Education Code Section 35816(a), as amended, increases the scope of the discrimination complaint process to include the intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. Paragraph (3) is amended to except this new subject matter from the existing process of filing the complaint first with the principal. New paragraph (4) requires that a complaint regarding any deficiencies related to intensive instruction and services provided

pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12 shall be submitted to the district official designated by the district superintendent.

Education Code Section 35186, subdivision (e)

Education Code Section 35186(e), as amended, adds new paragraph (4) which requires that the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, is added to the scope of the complaint process.

Education Code Section 35186, subdivision (f)

Education Code section 35186 (f), as amended, adds new paragraph (4) which adds the intensive instruction and services subject matter to the classroom notice regarding the complaint process.

PART 2. COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars ($1,000) for the Sweetwater Union High School District.

1. IMPLEMENTING MANDATE AMENDMENTS

Policies, Procedures, Planning, Training: Staff time amending previous policies and procedures to incorporate changes made to the program and forms and training school district staff to implement the mandate.

Estimated Costs October 2007 through June 2008	$ 0
Estimated Costs July 2008 through June 2009	$ 0

2. COUNTY OFFICE INSPECTIONS OF WILLIAMS DECILES 1-3 SCHOOLS

HIGH SCHOOL EXIT EXAM

Staff time to participate in and respond to the county office of education school field inspections, pursuant to Section 1240 (c)(2)(E) and (J), regarding the determinations from the inspections:

(1) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(2) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

Estimated Costs October 2007 through June 2008	$ 550
Estimated Costs July 2008 through June 2009	$ 500

UNIFORM COMPLAINT PROCEDURE

Staff time to, pursuant to Section 35816, to:

(1) Add to the scope of the complaint process the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, is added to the scope of the process.

(2) Add to the classroom notice regarding the complaint process the subject matter of the intensive instruction and services.

(3) Respond to complaints submitted to the district official designated by the district superintendent regarding any deficiencies related to intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.

Estimated Costs October 2007 through June 2008	$ 1,500
Estimated Costs July 2008 through June 2009	$ 1,500
TOTAL COST ESTIMATE AMOUNT October 2007 through June 2008	$ 2,050
TOTAL COST ESTIMATE AMOUNT July 2008 through June 2008	$ 2,000

PART 3. FUNDING SOURCES

1. State Funds

Section 8 of Statutes of 2007, Chapter 526, allocates $1.5 million of the funds appropriated to the State Department of Education in the Budget Act of 2007 for allocation to county offices of education for purposes of implementing Education Code Section 1240. However, none of these funds have been appropriated to school districts for the increased activities required by Statutes of 2007, Chapter 526.

2. Other funds

No federal funds have been received by the school district, or are receivable, which were specifically appropriated to implement this mandate. No other state or local

monies were received by the school district, or are receivable, which were specifically appropriated to implement this mandate. No federal, state, local government, or private grants or awards have been received by the school district, or are receivable, which were specifically designated to implement this mandate. There is no authority in federal, state, or local law for this school district to levy fees to offset the costs to implement this mandate.

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CERTIFICATION

I hereby declare under penalty of perjury under the laws of the State of California that the information in this declaration is true and complete to the best of my own knowledge or information or belief.

EXECUTED this 23rd day of June 2008, at Chula Vista, California

Karen Janney

Karen Janney, Assistant Superintendent
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896
Voice: 619-691-5546
Fax: 619-407-4975
E-Mail: Karen.janney@suhsd.k12.ca.us

Document	Pages	Total Pages
Statutes of 2007 Chapter 526 (A.B. 347)	3391-3405	15

Exhibit B STATUTES

SCHOOLS AND SCHOOL DISTRICTS—GRADUATION—INTENSIVE INSTRUCTION

CHAPTER 526

A.B. No. 347

AN ACT to amend Sections 1240, 35186, 37254, 52378, and 52380 of the Education Code, relating to pupil instruction, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 347, Nava Pupils: high school exit examination: intensive instruction and services.

(1) Existing law requires each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school.

Existing law provides specified funding for eligible pupils, as defined, who are required to pass the high school exit examination, to be used for intensive instruction and services for those pupils, and provides for the allocation of those funds, based on a per pupil rate calculation, to schools. As a condition of receiving funding, a school district is required to accomplish certain matters, including, among other things, ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need and submit an annual report to the Superintendent of Public Instruction relating to the provision of intensive instruction and services to pupils.

This bill, among other things, would revise the definition of "eligible pupil" to include pupils who have not satisfied the requirement that they pass the high school exit examination in order to graduate from high school and have failed one or both parts of the examination by the end of grade 12; revise the calculation for determining the per pupil rate for purposes of funding; authorize the receipt of intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district for eligible pupils; expand the authorized scope of intensive instruction and services to include instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed and the provision of instruction and services by a public or nonpublic entity as determined by the local educational agency; require a school district to accomplish additional matters relating to pupils who have not passed one or both parts of the exit examination by the end of grade 12; and require the annual report to also include information relating to the notification of eligible pupils of the intensive instruction and services provided and be submitted to the appropriate county superintendent of schools.

(2) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. A notice regarding the appropriate subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee.

This bill also would require a school district to use its uniform complaint process to help identify and resolve any deficiencies related to intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. The bill would also require the notice, for certain classrooms, to include certain information about the entitlement to receive the intensive instruction and services, and would require a complaint regarding any deficiency related to intensive instruction and services to be submitted to the district official designated by the district

superintendent. By imposing additional duties on school districts, this bill would impose a state-mandated local program.

(3) Existing law establishes the Middle and High School Supplemental Counseling Program and requires the governing board of a school district that maintains any of grades 7 to 12, inclusive, as a condition of receiving funds appropriated for purposes of that program, to adopt a counseling program at a public meeting that includes, among other things, a provision for a counselor to meet with each pupil, as specified, to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and the availability of career technical education. In addition to these counseling services, a school district is required to identify certain pupils, such as those at risk of not graduating with the rest of their class, and to require its schools to provide certain assistance in developing a list of coursework and experience. As a further condition of receipt of funds, a school district is required to submit an annual report in a manner determined by the Superintendent that describes certain matters, including the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the high school exit examination.

This bill also would require the counselor to explain the availability, for up to 2 consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, of intensive instruction and services for those pupils who have not passed one or both parts of the exit examination by the end of grade 12. The bill also would require a school district, for the identified pupils, to inform a pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services. The bill would require the report also to be submitted to the appropriate county superintendent of schools and contain an assurance that the school district has complied with the provision that requires a school counselor to apprise a pupil of certain information during an individual conference.

(4) Existing law requires a county superintendent of schools to undertake specified duties regarding the oversight of the school districts within his or her jurisdiction.

This bill would require a county superintendent of schools to perform additional duties related to conducting school visits and verifying that pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to 2 consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the exit examination, whichever comes first, and verifying that those pupils who elected to receive the instruction and services are being served. By imposing additional duties on local educational agencies or officials, the bill would impose a state-mandated local program.

(5) This bill would make other technical, nonsubstantive changes to existing law.

(6) This bill also would incorporate additional changes in Section 52378 of the Education Code, proposed by SB 405, to be operative if SB 405 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, 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.

(8) By specifying a new purpose for the use of $1.5 million of funds that would be appropriated to the State Department of Education in the Budget Act of 2007 for allocation to county offices of education, this bill would make an appropriation.

To the extent that the funds appropriated by this bill are allocated to a school district, which is defined to include, but is not limited to, a county board of education and a county superintendent of schools, which govern and administer, respectively, a county office of education, those funds would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c)(1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she * * * annually may present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2)(A) For fiscal years 2004–05 to 2006–07, inclusive, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, * * * annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API), as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools and his or her determinations for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. As a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

(B) Commencing with the 2007–08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, * * * annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include * * * schools determined by the department to meet either of the following:

(i) The school meets all of the following criteria:

(I) Does not have a valid base API score for 2006.

(II) Is operating in fiscal year 2007–08 and was operating in fiscal year 2006–07 during the Standardized Testing and Reporting (STAR) Program testing period.

(III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.

(ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.

(C) The department shall estimate an API score for any school meeting the criteria of subclauses (I) and (II) of clause (i) of subparagraph (B) * * * and not meeting the criteria of subclause (III) of clause (i) of subparagraph (B) * * *, using available test scores and * * * weighting or corrective factors it deems appropriate. The department shall post the API scores on its Internet Web site on or before May 1.

(D) For purposes of this section, references to schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall exclude * * * schools operated by county offices of education pursuant to Section 56140, as determined by the department.

(E) In addition to the requirements above, the county superintendent, or his or her designee, annually shall verify both of the following:

(i) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(ii) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(F)(i) Commencing with the 2010–11 fiscal year and every third year thereafter, the Superintendent shall identify a list of schools ranked in deciles 1 to 3, inclusive, of the API for which the county superintendent, or his or her designee, * * * annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county that describes the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the base API as defined in clause (ii).

(ii) For the 2010–11 fiscal year, the list of schools ranked in deciles 1 to 3, inclusive, of the base API shall be updated using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the 2009 base API and thereafter shall be updated every third year using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the base API of the year preceding the third year consistent with clause (i).

(iii) As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

(G) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(H) On a quarterly basis, the county superintendent, or his or her designee, shall report the results of the visits and reviews conducted that quarter to the governing board of the school district at a regularly scheduled meeting held in accordance with public notification requirements. The results of the visits and reviews shall include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. If the county superintendent, or his or her designee, conducts no visits or reviews in a quarter, the quarterly report shall report that fact.

(I) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance, and the sufficiency of instructional materials, as defined by Section 60119.

(J) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(iv) The extent to which pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(v) The extent to which pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(K) The county superintendent may make the status determinations described in subparagraph (J) during a single visit or multiple visits. In determining whether to make a single visit or multiple visits for this purpose, the county superintendent shall take into consideration factors such as cost-effectiveness, disruption to the schoolsite, deadlines, and the availability of qualified reviewers.

(L) If the county superintendent determines that the condition of a facility poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72, or is not in good repair, as specified in subdivision (d) of Section 17002 and required by Sections 17014, 17032.5, 17070.75, and 17089, the county superintendent * * *, among other things, may do any of the following:

(i) Return to the school to verify repairs.

(ii) Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the visit of the county * * * superintendent or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on * * * his or her Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually, on or before August 15, present a report to the governing board of the school district and the Superintendent regarding the fiscal solvency of a school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined * * * to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of an applicant or his or her authorized agent.

(h) Enforce the course of study.

(i)(1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3)(A) Commencing with the 2005–06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the * * * base API, as specified in paragraph (2) of subdivision * * * (c), and not currently under review pursuant to a state or federal intervention program, the county superintendent * * * specifically shall review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be completed by the fourth week of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent * * * in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the * * * base API, as specified in paragraph (2) of subdivision * * * (c), may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent * * * elects to conduct written surveys of teachers, the county superintendent * * * shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the school district as set forth in paragraph (4).

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), or, if applicable, provide a copy of the report to the school district within 10 business days pursuant to subparagraph (B) of paragraph (3).

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the department purchases textbooks or instructional materials for the school district, the department shall issue a public statement at the first regularly scheduled meeting of the state board occurring immediately after the department receives the request of the county * * * superintendent and that meets the applicable public notice requirements, indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary for the purchase of the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials.

Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent, the Superintendent shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(*l*)(1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent * * * no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to a county office of education that, based upon current projections, will not meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to a county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to a county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent may reclassify a certification. If a county office of education receives a negative certification, the Superintendent, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent, and shall be based on standards and criteria for fiscal stability adopted by the state board * * * pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent * * * to an interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent.

(4) The county superintendent * * * is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of a certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of an educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent * * * discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of an educational program has been reported.

SEC. 2. Section 35186 of the Education Code is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, * * * teacher vacancy or misassignment, and intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. If Section 48985 is otherwise applicable, the response, if requested, and report shall be written in English and the primary language in which the complaint was filed. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) Except as provided pursuant to paragraph (4), a complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(4) A complaint regarding any deficiencies related to intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12 shall be submitted to the district official designated by the district superintendent. A complaint may be filed at the school district office, or it may be filed at the schoolsite and shall be immediately forwarded to the designee of the district superintendent.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent, who shall provide a written report to the state board * * * describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state-adopted or district-adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a teacher vacancy exists.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20-percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate and the requirements established pursuant to subdivision (a) of Section 35292.5.

(4) A complaint related to the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents, guardians, pupils, and teachers of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) There should be no teacher vacancies or misassignments as defined in paragraphs (2) and (3) of subdivision (h).

(4) Pupils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254. The information in this paragraph, which is to be included in the notice required pursuant to this subdivision, shall only be included in notices posted in classrooms in schools with grades 10 to 12, inclusive.

(5) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Internet Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(h) For purposes of this section, the following definitions apply:

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

SEC. 3. Section 37254 of the Education Code is amended to read:

37254. (a) For purposes of this section, "eligible pupil" means a pupil who * * * has not met the California High School Exit Examination requirement for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33, and who has failed one or both parts of that examination by the end of grade 12.

(b)(1) From the funds appropriated for purposes of this section in the annual Budget Act or other statute, the Superintendent shall determine a per pupil rate of funding by dividing the total amount of funds appropriated for purposes of this section by the number of eligible pupils in grade 12 as reported by school districts in accordance with paragraph (7) of subdivision (d) * * *. The Superintendent shall then apportion to each school district an amount equal to the per pupil rate determined pursuant to this paragraph multiplied by the number of eligible grade 12 pupils reported pursuant to paragraph (7) of subdivision (d).

(2) If funds appropriated for purposes of paragraph (1) are not exhausted after the apportionment * * * pursuant to paragraph (1) is made, the Superintendent shall determine a per pupil rate of funding * * * for eligible pupils in grade 11 * * * by dividing the total amount of funds appropriated for purposes of this section remaining after the apportionment pursuant to paragraph (1) has been made by dividing the total number of eligible pupils in grade 11 reported by school districts in accordance with paragraph (7) of subdivision (d). The Superintendent shall apportion to each school district an amount equal to the per pupil rate determined pursuant to this paragraph multiplied by the number of eligible grade 11 pupils reported pursuant to paragraph (7) of subdivision (d).

(3) The maximum per pupil * * * rate of funding shall not exceed five hundred dollars ($500) * * * and shall be increased annually by the percentage determined in paragraph (2) of subdivision (b) of Section 42238.1

(c)(1) The funds described in subdivision (b) shall be used to provide intensive instruction and services designed to help eligible pupils pass the California High School Exit Examination.

(2) Intensive instruction and services may be provided during the regular schoolday provided that they do not supplant the instruction of the pupil in the core curriculum areas as defined in paragraph (5) of subdivision (a) of Section 60603, or physical education instruction. Eligible pupils may receive intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district in order to meet the needs of these pupils.

(3) Intensive instruction and services may include, but are not limited to, all of the following:

(A) Individual or small group instruction.

(B) The hiring of additional teachers.

(C) Purchasing, scoring, and reviewing diagnostic assessments.

(D) Counseling.

(E) Designing instruction to meet specific needs of eligible pupils.

(F) Appropriate teacher training to meet the needs of eligible pupils.

(G) Instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed. A school district may employ different intensive instruction and services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive high school of the district.

(H) The provision of instruction and services by a public or nonpublic entity, as determined by the local educational agency.

(d) As a condition of receiving funds pursuant to subdivision (c), the school district shall accomplish all of the following:

(1) Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need.

(2) Ensure that each pupil receives intensive instruction and services based on the results of the diagnostic assessment, and prior results on the high school exit examination.

(3) Ensure that all pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 are notified in writing at the last known address before the end of each school term of the availability of the services in sufficient time to register for or avail themselves of those services each term for two consecutive academic years thereafter

and are notified of the right of a pupil to file a complaint regarding those services as set forth in Section 35186. In addition to notifying the pupil, or his or her parent or legal guardian if the pupil is under the age of 18, in writing, the notice shall be posted in the school office and district office and on the Internet Web site of the school district, if applicable. The notice shall comply with the translation requirements of Section 48985.

(4) Ensure that all pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 have the opportunity to receive intensive instruction and services as needed based on the results of the diagnostic assessment and prior results on the high school exit examination, as specified in paragraph (2), for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first. A school district shall employ strategies for intensive instruction and services that are most likely to result in these pupils passing the parts of the high school exit examination that they have not yet passed.

(5) Ensure that all English learners who have not passed one or both parts of the high school exit examination by the end of grade 12 have the opportunity to receive intensive instruction and services provided under paragraph (3) of subdivision (c) that also shall include services to improve English proficiency as needed based on the results of the diagnostic assessment and prior results on the high school exit examination, as specified in paragraph (2), to pass those parts of the high school exit examination not yet passed, for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first. A school district shall employ strategies for intensive instruction and services that are most likely to result in these pupils passing the parts of the high school exit examination that they have not yet passed.

(6) Demonstrate that funds will be used to supplement and not supplant existing services.

(7) Provide to the Superintendent, in a manner and by a date certain determined by the Superintendent, the number of eligible pupils at each high school in the school district.

(8) Submit an annual report to the Superintendent and the appropriate county superintendent of schools in a manner determined by the Superintendent that describes the manner and frequency in which eligible pupils were notified of the intensive instruction and services provided, the number of pupils served for each type of service provided, and the number of pupils in the school district who successfully pass the high school exit examination by each type of service provided.

SEC. 4. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board and shall include all of the following:

(1) A provision for individualized review of the pupil's academic and deportment records.

(2) A provision for a counselor to meet with each pupil and if practicable, the parents or legal guardian of the pupil, to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, the availability of intensive instruction and services as required pursuant to subdivision (c) of Section 37254, for up to two consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, for those pupils who have not passed one or both parts of the high school exit examination by the end of grade 12, and the availability of career technical education. The educational options explained at the meeting * * *, if services are available, shall include college preparatory program and vocational programs, including regional occupational centers and programs and any other alternatives available to pupils within the district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have

sufficient training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in their respective grade that has not passed one or both parts of the high school exit examination and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit examination.

(3) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(4) Inform the pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services.

(c)(1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the pupil's school district.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For the 2006–07 school year, the conference shall occur on or before December 31, 2006.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

(2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.

(3) Cumulative records and transcripts of the pupil.

(4) Performance on standardized and diagnostic assessments of the pupil.

(5) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing pupils of the option to receive intensive

instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(6) Information on postsecondary education and training.

(7) The pupil's score on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.

SEC. 4.5. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board of a school district and shall include all of the following:

(1) A provision for individualized review of the * * * academic and deportment records of the pupil.

(2) A provision for individualized review of the career goals of, and the available academic and career technical education opportunities and community and workplace experiences available to, the pupil that may support the pursuit of the goals of the pupil.

(3) A provision for a counselor to meet with each pupil and if practicable, the parents or legal guardian of the pupil * * * to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and eligibility for admission to a four-year institution of postsecondary education, including the University of California and the California State University, as well as the availability of intensive instruction and services as required pursuant to subdivision (c) of Section 37254, for up to two consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, for those pupils who have not passed one or both parts of the high school exit examination by the end of grade 12, and the availability of career technical education. The educational options explained at the meeting * * *, if services are available, shall include the college preparatory program and * * * career technical education programs, including regional occupational centers and programs and any other alternatives available to pupils within the school district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in * * * his or her respective grade that has not passed one or both parts of the high school exit examination or has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University, and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit examination.

(3) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 to begin to satisfy the curricular requirements for admission to the University of California and the California State University.

* * * (4) Require each school within its jurisdiction to provide a copy of the * * * lists developed pursuant to paragraphs (2) and (3) to the pupil and his or her parent or legal

guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(5) Inform the pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services.

(c)(1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the * * * school district of the pupil.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For * * * a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 10 shall occur * * * in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 12 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

(2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.

(3) Cumulative records and transcripts of the pupil.

(4) Performance on standardized and diagnostic assessments of the pupil.

(5) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing pupils of the option to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(6) Information on postsecondary education and training.

(7) The * * * score of the pupil on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.

(8) Eligibility requirements, including coursework and test requirements, and the progress of the pupil toward satisfaction of those requirements for admission to four-year institutions

of postsecondary education, including, at least, the University of California and the California State University.

(9) The availability of financial aid for postsecondary education.

SEC. 5. Section 52380 of the Education Code is amended to read:

52380. As a condition of receipt of funds pursuant to this chapter, a school district shall submit an annual report to the Superintendent and the appropriate county superintendent of schools in a manner determined by the Superintendent that describes the number of pupils served, the number of school counselors involved in conferences, the number and percentage of pupils who participated in conferences and who successfully pass the high school exit examination, and the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the exit examination, and a summary of the most prevalent results for pupils based on the graduation plans developed pursuant to this chapter. The report also shall contain an assurance that the school district has complied with subdivision (e) of Section 52378.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 52378 of the Education Code proposed by both this bill and SB 405. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, but this bill becomes operative first, (2) each bill amends Section 52378 of the Education Code, and (3) this bill is enacted after SB 405, in which case Section 52378 of the Education Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of SB 405, at which time Section 4.5 of this bill shall become operative.

SEC. 7. 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.

SEC. 8. (a) Of the funds appropriated in Item 6110–266–0001 of Section 2.00 of the Budget Act of 2007, up to one million five hundred thousand dollars ($1,500,000) may be used to provide funding to county offices of education for the oversight activities required pursuant to subparagraph (E) of paragraph (2) of subdivision (c) of Section 1240 of the Education Code. The statewide organization that represents county superintendents of schools shall recommend a methodology for allocation of these funds to the Superintendent of Public Instruction by October 1, 2007. The Superintendent of Public Instruction may modify the methodology, subject to approval by the Department of Finance and 30–day notification to the appropriate policy and fiscal committees of the Legislature. Funds shall not be allocated prior to the expiration of the 30–day notification period.

(b) It is the intent of the Legislature that the allocation method specified in subdivision (a) be applied for the 2007–08 fiscal year and the determination of allocations for the 2008–09 fiscal year and each fiscal year thereafter be subject to the normal budget process.

SEC. 9. 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 timely assistance to the pupils of the classes of 2006 and 2007 who have not passed one or both sections of the high school exit examination by the end of grade 12, it is necessary that this bill take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—HIGH SCHOOLS OR SECONDARY SCHOOLS—CURRICULUM

CHAPTER 527

A.B. No. 428

AN ACT to amend Section 48980 of, and to add Section 51229 to, the Education Code, relating to high school curriculum.

[Filed with Secretary of State October 12, 2007.]

Document	Pages	Total Pages
Title 2, CCR, Sections 1859.300-1859.330	1-50	50

Exhibit C REGULATIONS

2 CA ADC § 1859.300

2 CCR § 1859.300

Cal. Admin. Code tit. 2, § 1859.300

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
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§ 1859.300. Purpose.

These regulations implement the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.70 and 17592.71, Education Code.

HISTORY

1. New subgroup 5.7 (articles 1-3, sections 1859.300-1859.329), article 1 (sections 1859.300-1859.302) and section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.300, 2 CA ADC § 1859.300
1CAC

2 CA ADC § 1859.300

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2 CCR § 1859.301

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§ 1859.301. Director of General Services.

The Director of General Services, or the Director's legal designee, shall perform all acts necessary to carry out the provisions of these regulations except such functions reserved to the Board and to other agencies by law or by Sections 1859.300 through 1859.329, inclusive. These acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17070.20, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.301, 2 CA ADC § 1859.301
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2 CA ADC § 1859.301

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§ 1859.302. Definitions.

For the purposes of these Subgroup 5.7 regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:
"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information and Required Documentation section of the Form SAB 61-03,Grant Request,(Rev. 01/07), as appropriate, and the OPSC has accepted the application.
"Act" means California Education Code (EC) Sections 17592.70 through 17592.73, inclusive, and 41207.5.
"Apportionment" means an allocation of funds by the Board for eligible School Facilities Needs Assessment Grant Program or Emergency Repair Program costs.
"Board" means the State Allocation Board as established by Section 15490 of the Government Code.
"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by the LEA to the California Department of Education (CDE).
"Certification of Eligibility" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of a one-time determination of whether a school site meets the provisions of Section 1859.311(b).
"Cosmetic Repairs" means repairs that enhance the physical environment of the school and are not directly related to the mitigation of a health and safety hazard.
"Deferred Maintenance Program (DMP)" means the State deferred maintenance funding authorized by EC Sections 17582 through 17588, inclusive.
"Emergency Facilities Needs" means structures or systems that in their present condition pose an immediate threat to the health and safety of pupils and staff while at school.
"Emergency Repair Program (ERP)" means the repair program implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.
"ERP Grant" means an Apportionment provided by the State to the LEA for eligible costs, pursuant to EC Section 17592.72 and Regulation Sections 1859.323, 1859.323.1, and 1859.323.2.
"Employee" means an individual that is a classified or certificated temporary, probationary or permanent employee receiving a warrant as payment from the LEA.
"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.
"Form SAB 61-01" means theNeeds Assessment Report, Form SAB 61-01 (New 01/05), which is incorporated by reference.
"Form SAB 61-02" means theExpenditure Report, Form SAB 61-02 (New 02/05), which is incorporated by reference.
"Form SAB 61-03" means theGrant Request, Form SAB 61-03 (Rev. 01/07), which is incorporated by reference.
"Form SAB 61-04" means theExpenditure Report, Form SAB 61-04 (New 01/07), which is incorporated by reference.
"Grant" means an apportionment for a request for an Emergency Repair Program project and can include reimbursement for projects already completed.
"Grant Adjustment" means an increase or a decrease in the Grant after review of the Form SAB 61-04.

"Interim Evaluation Instrument" means the evaluation tool developed pursuant to EC Section 17002.
"LEA Representative" means a member of the LEA staff or other agent authorized to execute and file application(s) with the Board on behalf of the LEA and/or act as liaison between the Board and the LEA.
"Like-Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.
"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.
"Needs Assessment" means the review of the facilities conducted pursuant to the Section 1859.315(c), the Form SAB 61-01 and EC Section 17592.70.
"Needs Assessment Grant" means the funding provided pursuant to EC Section 17592.70(c) and Sections 1859.312 and 1859.313.
"Nonessential Repairs" means work that is not directly related to the mitigation of a health and safety hazard including, but not limited to, repairs to correct items not in compliance with Title 24 of the California Code of Regulations that existed prior to and are not an Emergency Facilities Needs.
"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 School Facilities Needs Assessment Grant Program and the Emergency Repair Program.
"Pupil" means a student enrolled in any grade Kindergarten through grade twelve including individuals with exceptional needs meeting the provisions of EC Section 56026.
"Ready for Apportionment" means a review of an Accepted Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an Apportionment, and the OPSC will recommend approval to the Board.
"Routine Restricted Maintenance Account" means the account into which funds are deposited by LEAs pursuant to EC Section 17070.75.
"School Facilities Emergency Repair Account" means the account established by the OPSC pursuant to EC Section 17592.71(a).
"School Facilities Needs Assessment Grant Program" means the one-time assessment of school facilities implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.
"School Facility Program (SFP)" means the Leroy F. Greene School Facilities Act of 1998, commencing with EC Section 17070.10.
"Section" means a section in these Subgroup 5.7 regulations.
"Unfunded List" means an information list of unfunded projects including projects partially funded on a prorated basis pursuant to Section 1859.322(b)(1).
"Web-Based Needs Assessment" means the on-line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the one-time purpose of submitting the Needs Assessment data electronically.
"Web-Based Progress Report Survey" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of submitting a one-time report on the progress made toward completing the Needs Assessment.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.70, 17592.71, 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order, including reordering of definitions to correct alphabetical order, transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of definitions of "Accepted Application(s)," "Apportionment," Emergency Repair Program Grant," "Form SAB 61-03," "School Facility Program" and "Unfunded List" and new definitions of "Form SAB 61-04," "Grant" and "Grant Adjustment" filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the

following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.302, 2 CA ADC § 1859.302
1CAC

2 CA ADC § 1859.302

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2 CCR § 1859.310

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§ 1859.310. General.

A school site that qualifies for the School Facilities Needs Assessment Grant Program according to the provisions of EC Section 17592.70(b) shall be allocated funds by the Board in order to conduct a one-time comprehensive school facilities needs assessment. An LEA that receives funds under this Article shall be required to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of Section 1859.311.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New article 2 (sections 1859.310-1859.319) and section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.310, 2 CA ADC § 1859.310
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§ 1859.311. Eligible Schools.

An LEA that has a school site meeting all of the following is eligible for the School Facilities Needs Assessment Grant Program:
(a) The school was identified on the list published by the CDE pursuant to EC Section 17592.70(b).

(b) The school was newly constructed prior to January 1, 2000.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.311, 2 CA ADC § 1859.311
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§ 1859.312. Apportionment of Funds.

The Board shall allocate ten dollars ($10) per Pupil enrolled in eligible school sites, according to the 2003 October CBEDS Report, for each school site identified by CDE pursuant to Section 1859.311(a). A minimum allocation of seven thousand five hundred dollars ($7,500) shall be made for each school site. Once an Apportionment has been made by the Board and the OPSC has received the Certification of Eligibility, funds for eligible school sites will be released by OPSC to the LEA with jurisdiction over the school site(s) along with requirements for the money to be spent at the eligible school site(s) in accordance with Section 1859.313. Any school site not meeting the provisions of Section 1859.311(b) is ineligible for funding under these regulations. Apportionments shall be reduced by the grant amount allocated for ineligible school sites upon receipt of the Certification of Eligibility.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.312, 2 CA ADC § 1859.312
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§ 1859.313. Use of Needs Assessment Grant Funds.

The LEA shall only use the Needs Assessment Grant funds for the following:
(a) Unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment.

(b) Repairs identified in Part V of the Form SAB 61-01 at any eligible school site within the LEA where a Needs Assessment has been completed.

Apportionments may be rescinded or reduced by the grant amount provided for each eligible school site where the LEA fails to comply with the provisions of Sections 1859.310 and 1859.315.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.313, 2 CA ADC § 1859.313
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§ 1859.314. Qualifications of the Inspector.

The Needs Assessment must be prepared in accordance with all of the following:
(a) The person(s) performing or supervising the Needs Assessment must have general knowledge of school facilities construction, operation, and maintenance and either of the following:

(1) A minimum of three years of experience with cost estimation and building systems life cycle analysis; or

(2) An Architect, Engineer, or General Contractor license under California law.

(b) The person(s) meeting or being supervised by individuals that meet the conditions of (a), above, must personally conduct the assessment on the school site(s).

(c) The individual(s) performing or supervising the Needs Assessment must be independent third parties and may not be Employee(s) of the LEA with jurisdiction over the school site for which the Needs Assessment is being performed.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.314, 2 CA ADC § 1859.314
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§ 1859.315. Program Reporting Requirements.

An LEA that receives School Facilities Needs Assessment Grant funds pursuant to Section 1859.312 shall:
(a) Complete a Certification of Eligibility and submit it to the OPSC. Each LEA shall submit one certification to the OPSC. Fund release(s) shall be processed by the OPSC for all eligible sites upon receipt of the complete signed and dated Certification of Eligibility.

(b) Complete a Web-Based Progress Report Survey and submit it to the OPSC. Each LEA shall submit one survey unless the Needs Assessment for all eligible school sites has been completed pursuant to subsection (c), below:

(c) Complete a Web-Based Needs Assessment for each applicable site and submit it to the OPSC by January 1, 2006.

(d) Complete Form SAB 61-02 to report all expenditures made with Needs Assessment Grant funds on an LEA-wide basis and submit it to the OPSC by January 1, 2007.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: 17592.73, Education Code. Reference: Sections 17592.70 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.315, 2 CA ADC § 1859.315
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§ 1859.316. Needs Assessment Grant Expenditures and Audit.

The projects shall be subject to audit to ensure that expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.313 and 1859.314. Any funds not Expended on the Needs Assessment or eligible repairs at the time of submittal of the Form SAB 61-02 shall be returned to the OPSC.
After the OPSC receives the expenditure report from the LEA on the Form SAB 61-02 and the LEA is notified of an impending Needs Assessment audit, an audit of the expenditures by the OPSC shall commence within six months. The OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.
Should the OPSC conduct an audit of the expenditures and information, which may include certifications, for expenditures made pursuant to Section 1859.310 and make a finding that some or all of the expenditures were not made in accordance with the provisions of Section 1859.313, the OPSC shall recommend to the Board that the Apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 30 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.316, 2 CA ADC § 1859.316
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§ 1859.317. Duplication of Needs Assessment Grant Expenditures.

If the LEA's expenditures for the Needs Assessment Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:
(a) No work or expenditures are duplicated.

(b) After eliminating the work to be funded with the Needs Assessment Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.317, 2 CA ADC § 1859.317
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§ 1859.318. Supplement, Not Supplant, Needs Assessment Grant Funds.

Needs Assessment Grant funds remaining after the completion of the Needs Assessment must be used for repairs authorized in Section 1859.313(b) and must be used to supplement, not supplant, funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with this requirement, the LEA must comply with all of the following in the 2005/2006 fiscal year:
(a) Deposit the funding level required pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.

(b) Deposit an amount equal to the State's matching share of the basic grant pursuant to EC Section 17584, if participating in the DMP.

(c) If either (a) or (b) are not applicable, the district must budget an amount not less than the average maintenance budget for the three previous fiscal years.

(d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005

and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of subsection (d) and Note filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.318, 2 CA ADC § 1859.318
1CAC

2 CA ADC § 1859.318

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2 CCR § 1859.319

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§ 1859.319. Remaining Needs Assessment Grant Funds.

Any funds unapportioned or returned to the OPSC shall be transferred into the School Facilities Emergency Repair Account.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 41207.5, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.319, 2 CA ADC § 1859.319
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§ 1859.320. General.

An LEA seeking an ERP Grant for funding of costs for repairs or replacement of existing structural components or building systems that pose(d) a health and safety threat to the pupils or staff while at school, as defined by EC Section 17592.72(c)(1), shall submit to the OPSC a completed Form SAB 61-03.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New article 3 (sections 1859.320-1859.329) and section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.320, 2 CA ADC § 1859.320
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2 CA ADC § 1859.320

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§ 1859.321. Eligible Schools.

Eligible schools are determined as follows:
(a) An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:

(1) The school was identified on the list published by the CDE pursuant to EC Section 17592.72.

(2) The school was newly constructed prior to January 1, 2000.

(b) Commencing with the 2007/08 Fiscal Year and for subsequent fiscal years, an LEA that has a school site that is identified by the CDE pursuant to EC Section 17592.72 is eligible to submit a Form SAB 61-03.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.321, 2 CA ADC § 1859.321
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2 CA ADC § 1859.321

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§ 1859.322. Emergency Repair Program Project Funding Order.

The Board shall make apportionments on a monthly basis for Grants in the order of receipt of an Accepted Application and for Grant Adjustments in the order of receipt of a complete Form SAB 61-04, as follows:
(a) If sufficient funding is available to provide funding to all applications presented that month, all applications will receive an Apportionment of the eligible costs.

(b) If funding is insufficient in any given month:

(1) Grants will be provided to each application on a prorated basis with the balance placed on the Unfunded List, unless the proration will result in funding less than 25 percent of the eligible project costs. The proration shall be determined by dividing the total funds available by the total eligible costs of all applications Ready for Apportionment. All Grant Adjustments will be placed on the Unfunded List.

(2) If the proration, as determined in (1) above, will be less than 25 percent of the eligible project costs, the Board shall provide Grant funding at 100 percent of the eligible project costs of the Grants based on date order received until funds are no longer available and the remaining Grant applications shall be placed on the Unfunded List. All Grant Adjustments will be placed on the Unfunded List.

(3) The Board will continue to accept and process applications for the purpose of developing an Unfunded List based on the order of receipt of the Accepted Applications.

When funds become available, projects on the Unfunded List will be apportioned in the order of date received. From available funds, Grants will be funded first and Grant Adjustments will be funded second. After an Apportionment has been made by the Board, funds will be released automatically by the OPSC. If local funds have been expended, the Apportionment must be used by the LEA to reimburse the special reserve fund and the original source of funds used to make the LEA expenditures for the ERP project.

Once all ERP funds have been depleted, any applications that have received a prorated Apportionment, a Grant, or a Grant Adjustment will be deemed a full and final Apportionment any applications remaining fully unfunded on the Unfunded List will be returned to the LEA, and the Unfunded List shall be dissolved.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.71 and 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of section and Note filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.322, 2 CA ADC § 1859.322
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2 CA ADC § 1859.322

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§ 1859.323. Eligible Project Costs.

Funding will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). To be eligible for funding consideration, the total project cost request on the Form SAB 61-03 must be $5000 or higher unless the LEA can justify its request for a lesser amount. Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2(j).
Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of first paragraph filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

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2 CA ADC § 1859.323

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2 CCR § 1859.323.1

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§ 1859.323.1. Replacement Projects.

Funding of eligible replacement costs shall be provided only if it is more cost-effective to replace rather than repair a structural component or building system that poses a health or safety threat to pupils or staff while at school. For purposes of this section, it is more cost-effective to replace a structural component or building system when the estimated cost of an eligible repair is at least 75 percent of the cost of replacement.

If the cost to repair the component or system is less than 75 percent of the current replacement cost and the district elects to replace the component or system, then Grant funding shall be equal to the estimated cost of repair. Projects that use this option are not eligible for an increase to the Grant at the time of Grant Adjustment pursuant to Section 1859.324.1.

If the request is for replacement components or systems, a cost comparison must be prepared. The cost comparison shall consist of a repair cost estimate and a Like-Kind Material/System replacement cost estimate provided by qualified individual(s) or firm(s).

Replacement of a structural component or building system shall be limited to the use of a Like-Kind Material/System except when the work in the project proposes to use an alternative building material or system which is requested by the LEA. The cost comparison must also include the estimated cost of replacement using an alternative building material or system. If replacement with an alternate material/system is more costly than replacement with a Like-Kind Material/System, the LEA will receive funding for the alternate material/system in an amount not to exceed the cost of replacement with a Like-Kind Material/System. If it is determined that the only possible replacement is with the alternate material/system, the LEA will receive funding for the actual cost of replacement with the alternate material/system.

If the request is for replacement components or systems that included structural deficiencies, the cost comparison must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect's approval.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.323.1, 2 CA ADC § 1859.323.1
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2 CA ADC § 1859.323.1

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2 CCR § 1859.323.2

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§ 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:
(a) New square footage, components, or building systems that did not previously exist.

(b) Nonessential Repairs.

(c) Cosmetic Repairs.

(d) Land acquisition.

(e) Furniture and equipment.

(f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.

(g) Costs covered under warranty or by insurance.

(h) Costs normally borne by others including, but not limited to, public utility companies.

(i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).

(j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or $5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re-calculated upon the grant adjustment determination pursuant to Section 1859.324.1.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the

following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. New subsection (j) filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.323.2, 2 CA ADC § 1859.323.2
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§ 1859.324. Funding.

An Emergency Repair Program Grant shall be used to fund the LEA's eligible costs, as defined by Sections 1859.323 and 1859.323.1 as follows:
(a) For schools ranked in deciles one to three, inclusive, based on the 2003 Academic Performance Index that meet requirements defined by Section 1859.321(a) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after September 29, 2004.

(2) Funds must have been Expended on or after September 29, 2004.

(3) Accepted Applications on or before June 30, 2007. If these ERP regulations are not in effect by March 31, 2007, LEAs may submit applications for 90 days following the effective date of the regulations.

(b) For schools ranked in deciles one to three, inclusive, based on the 2006 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2005.

(2) Funds must have been Expended on or after July 1, 2005.

(3) Accepted Applications on or before June 30, 2010.

(c) For schools ranked in deciles one to three, inclusive, based on the 2009 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2008.

(2) Funds must have been Expended on or after July 1, 2008.

(3) Accepted Applications on or before June 30, 2013.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of section heading and section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.324, 2 CA ADC § 1859.324
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2 CA ADC § 1859.324

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§ 1859.324.1. Grant Adjustments.

After review of a Form SAB 61-04, projects that require a Grant Adjustment will be presented to the Board for approval based upon one of the following review determinations:
(a) If the expenditures are less than the Grant, the Grant will be deemed the full and final apportionment for the project and the OPSC shall recommend to the Board that the Apportionment be reduced by the amount of savings realized by the LEA. The savings, which include any interest earned on the Grant funds, either declared by the LEA or determined by the OPSC, must be returned to the State. Upon the approval of the recommendation by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If the LEA fails to make the required payment within 60 days, the OPSC shall notify the Controller and the LEA in writing, and the Controller shall deduct an amount equal to the amount received by the LEA under this subdivision from the LEA's next principal apportionment or apportionments of state funds to the LEA, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained pursuant to this Section shall be deposited into the School Facilities Emergency Repair Account and will be made available for the funding of future ERP Grants and Grant Adjustments.

(b) If the expenditures are greater than the Grant apportionment, provided the additional expenditures are associated with the project's original scope, the OPSC shall recommend to the Board that the Apportionment be increased. The Grant Adjustment will be deemed as the full and final apportionment for the project.

(c) If the expenditures are equal to the Grant, no further Board action is necessary. The Grant will be deemed as the full and final apportionment for the project.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

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§ 1859.325. School Facility Due Diligence.

To ensure that the LEA is exercising due diligence in the administration of its facility accounts and is using an Emergency Repair Program Apportionment to supplement existing funding for the maintenance of school facilities, the OPSC may conduct a review of the LEA's facility maintenance accounts pursuant to the provisions of Section 1859.328.
In the event that the Board finds that an LEA is failing to exercise due diligence or supplanting has occurred, the Board shall notify the county superintendent of schools in which the LEA is located and may deny future funding under these regulations.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.325, 2 CA ADC § 1859.325
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2 CA ADC § 1859.325

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§ 1859.326. Expenditures and Audit.

The projects shall be subject to audit to ensure that the expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.327, and 1859.328.
After a full and final Apportionment has been made pursuant to Regulation Section 1859.324.1, should the OPSC notify the LEA of an impending ERP audit of the expenditures reported on the Form SAB 61-04, an audit by the OPSC shall commence within six months. Once the audit has commenced, the OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.
Should the OPSC conduct an audit of the expenditures and information provided by the LEA, which may include certifications, for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of EC Section 17592.72(c) and Regulation Sections 1859.323 through 1859.329 inclusive, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures as delineated in Section 1859.324.1(a).

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of section heading and section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order, including amendment of final paragraph, transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.326, 2 CA ADC § 1859.326
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§ 1859.327. Duplication of Emergency Repair Program Expenditures.

If the LEA's expenditures for the Emergency Repair Program Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:
(a) No work or expenditures are duplicated.

(b) After eliminating the work to be funded with the Emergency Repair Program Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

2 CCR § 1859.327, 2 CA ADC § 1859.327
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§ 1859.328. Supplement, Not Supplant, Emergency Repair Program Grant Funds.

Emergency Repair Program Grant funds must be used to supplement, not supplant funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with these requirements, the LEA must comply with all of the following at the time the Accepted Application and the Form SAB 61-04 are submitted to the OPSC:
(a) Deposit the funding level required for the current fiscal year pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.

(b) If participating in the DMP, the district:

(1) For applications submitted prior to January 1, 2006, has deposited an amount equal to the State's matching share of the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and

(2) For applications submitted on or after January 1, 2006, has deposited an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and

(3) Will deposit an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the next scheduled determination.

(4) Shall not transfer excess local funds in accordance with EC Section 17583 from the deposits made as specified in (2) and (3), above.

(c) If either (a) or (b) are not applicable, the district must budget for the current fiscal year an amount not less than the average maintenance budget for the three previous fiscal years.

(d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for

ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment of first paragraph and subsection (d) filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

2 CCR § 1859.328, 2 CA ADC § 1859.328
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§ 1859.329. Withdrawal and Amendment of Applications.

In the event an LEA has omitted costs from the Form SAB 61-03 at the time of submittal and the project has not received a Grant Apportionment from the Board, the LEA may withdraw its application and resubmit a revised Form SAB 61-03. The resubmitted application shall receive a new processing date by the OPSC. If the Board has already provided a Grant Apportionment for the project, the LEA may request the additional cost on the Form SAB 61-04. Additional expenditures must be associated with the project's original scope. If the Board has already provided a Grant Adjustment for the project, the LEA will not be able to receive additional funding for the project and the Apportionment provided by the Board will be considered full and final.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

3. Amendment filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

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§ 1859.330. Time Limit on Grant Apportionment.

The LEAs that receive ERP Grants shall comply with all of the following provisions:
(a) When the Division of the State Architect's review and approval is not required, within 12 months of the Grant apportionment the LEA shall:

(1) Complete the emergency repair or replacement; and

(2) Submit the Form SAB 61-04 to the OPSC.

(b) When the Division of the State Architect's review and approval is required, within 18 months of the Grant apportionment the LEA shall:

(1) Complete the emergency repair or replacement; and

(2) Submit the Form SAB 61-04 to the OPSC.

If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action. Within 60 days of the OPSC notification, the LEA must submit to the State a warrant for the amount of the Apportionment and any interest earned on State funds. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a). Any rescinded funds returned to the State will be made available for the funding of future ERP Grants and Grant Adjustments. The LEA may re-file Form SAB 61-03 to request a Grant for the rescinded projects provided it meets the provisions of Section 1859.324 at the time of re-filing.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Sections 17592.72 and 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

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DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

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

August 18, 2006

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 of October 3, 2005, the Department of Finance has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School Districts (co-claimants) asking the Commission to determine whether specified costs incurred under various statutes and codes are reimbursable state mandated costs (Claim No. 05-TC-04, "Williams Case Implementation").

As a result of our review, we have concluded that the activities and requirements cited in this test claim do not constitute a state reimbursable mandate. We base this conclusion on the findings noted below, but first note that participation in voluntary and discretionary state programs, which may require certain conditions of participation, does not constitute a state mandate. In Department of Finance v. Commission On State Mandates (2003) 30 Cal.4th 727, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity. Consistent with this ruling, Williams Settlement activities imposed on the following voluntary programs should not constitute a reimbursable mandate:

- The School Facilities Emergency Repair Program (ERP), the School Facilities Program (SFP), the Lease Purchase Program, the Deferred Maintenance Program, and the State Relocatable Classroom Program.
- The Pupil Textbook and Instructional Materials Incentive Account.

In addition, Section 17556(e) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate if an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs, 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. Consistent with this code section, the following programs receive(d) funding for Williams Settlement activities, and therefore, these activities should not constitute a reimbursable mandate:

- Chapter 899, Statutes of 2004 (SB 6) provided $25 million for the School Facilities Needs Assessment Grant Program (SFNAGP).
- Though the ERP is a voluntary program, funding is also provided to fully fund school facilities emergency repair projects. The annual budget provides $100 million or 50 percent

of the unappropriated balance of the Proposition 98 Reversion Account, whichever amount is greater. The 2005 Budget Act provided $196 million for the ERP and the 2006 Budget Act provides $137 million for the ERP.

- Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools ranked in deciles 1 to 3, to report all instance of non-compliance with the instructional materials sufficiency requirements, to observe the sufficiency of textbooks, and to certify to the Superintendent of Public Instruction that school districts have corrected audit exceptions or that an acceptable plan of correction was submitted. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act.

There are also Williams Settlement activities that are not new activities or are activities that do not represent a higher level of service. All of these activities are reviewed in depth below.

Textbooks, Instructional Materials, Teachers, County Reporting

Education Code Section (ECS) 1240: This section was amended to require that county superintendents:

- Conduct announced and unannounced visits to observe the sufficiency of textbooks, as defined by ECS 60119, and to ensure the information is correctly presented in the School Accountability Report Card.
- Review any school in his/her jurisdiction that ranked in any of deciles 1 to 3, inclusive, and not currently under review by the state or federal government.
- Report all instances of non-compliance with the instructional materials sufficiency requirements, provide an opportunity for the remedy of any identified deficiency, and if not remedied, request the State Department of Education to purchase the materials on the district's behalf pursuant to specified guidelines.

We note that, under prior law (ECS 1240), county superintendents already were required to visit and examine each school in his or her county at reasonable intervals to observe its operations and to learn of its problems. Many of the new requirements added in this section are contingent on the availability of funding. Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools for these purposes. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act. Therefore, this is not a reimbursable mandate because funding is provided for these purposes consistent with Government Code Section 17556(e). Further, the specific language of this section only applies to county superintendents and does not impose any new duties upon school districts.

This section also references section (c) of Section 60119 that defines "sufficient textbooks or instructional materials." Adding the references to ECSs 51050 and 60119 does not constitute a reimbursable mandate, it simply references existing law that requires school districts to enforce the courses of study and the uses of textbooks and instructional materials prescribed and adopted by the proper authority. This is not a new activity and therefore, not reimbursable.

ECS 14501: This section specifies that a compliance audit include: (1) the reporting requirements related to the sufficiency of textbooks and instructional materials as defined in Section 60119; (2) the inclusion of information related to teacher misassignments pursuant to Section 44258.9; and (3) the accuracy of the information in the School Accountability Report Card. We note that, prior to these amendments, school districts were already required to undergo financial and compliance audits. We also note that the K-12 Audit Guide never

increases the amount of activities detailed for audit. Any new addition to the Audit Guide is accompanied by a deletion of another activity. Thus the addition of these new requirements will not result in increased costs imposed on the district.

ECS 41020: This section specifies inclusion of information related to the use of instructional materials funds, teacher misassignments, and the information reported in the school accountability report card in county superintendent of schools' review of audit exceptions. County offices were already required to review audit exceptions, so while this section calls out the need to look at specific audit exceptions, it does not result in any additional workload since all exceptions would have required review previously. Further, the specific language of this section only applies to county superintendents and does not impose any new duties upon school districts.

ECS 41344.4: County superintendents are required to certify to the Superintendent of Public Instruction (SPI) that school districts have corrected audit exceptions pursuant to paragraphs 1-3 of ECS 14501 (b), or that an acceptable plan of correction was submitted pursuant to subdivision (k) of ECS 41020. Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools for these purposes. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act. Therefore, this is not a reimbursable mandate because funding is provided for these purposes consistent with Government Code Section 17556(e).

ECS 42127.6: Subdivision (a), as amended by test claim legislation, requires the county superintendents to review audits, reports, studies, etc. that contain evidence that a district is in fiscal distress. Superintendents must also review reports by external evaluators that find more than three of the Fiscal Crisis and Management Assistant Team's (FCMAT's) 15-most common indicators of a district in need of intervention are present. The superintendents are then required to investigate whether the district is in danger of receiving a qualified or negative certification, and, if so, report this finding along with recommended actions to the SPI. We note that in some cases the county would have found a district in need of a negative or qualified certification during the course of their the normal interim reporting period, and that activities under this scenario are not new requirements.

This section also requires school districts to provide the county superintendent with reports, audits, examinations, etc. commissioned by the district, county, the SPI, other state agencies that contain evidence of district fiscal distress. The cost of submitting a copy of this report would not appear to meet the $1,000 annual threshold for making a claim.

ECS 44258.9: This section specifies the duties to be performed by county superintendents of schools with regard to the monitoring and review of school district certificated employee assignment practices and was amended by Chapter 118, Statutes of 2005, which simply clarified the existing language with regard to the monitoring and review of school teacher assignments. While this section provides priority and timeframes for schools based on specific characteristics (for example Academic Performance Index rank), the beginning of the code section clearly states that the duties are not mandated, but are to be performed "to the extent possible and with funds provided for that purpose..." Thus, this is not a reimbursable mandate. Further, the specific language of this section only applies to county superintendents and does not impose any new duties upon school districts.

ECS 60119: This section gives the eligibility requirements for the Pupil Textbook and Instructional Materials Incentive Program. Prior law required each governing school board, as a

condition of receipt of funds through the Pupil Textbook and Instructional Materials Incentive Program, to hold a public hearing or hearings to determine whether each pupil in each school in the district had sufficient textbooks and/or instructional materials in each subject consistent with the content and cycles of the curriculum framework adopted by the state board. Chapter 900, Statutes of 2004 (SB 550), specifies the curriculum subject matters to be discussed, specifies time frames for conducting the meetings, and defines "sufficient textbooks or instructional materials." Chapter 118, Statues of 2005 (AB 831) specifies that the materials must be standards aligned and that if an insufficiency exists, the district must report on the percentage of pupils lacking the materials. However, while Chapter 900, Statutes of 2004 (SB 550) and Chapter 118, Statues of 2005 (AB 831) provide more specificity regarding the times and issues to be discussed, the overarching requirement for a public meeting is not a mandated activity. Further, this section does not result in any mandated costs to districts for the reporting of insufficiencies, as instances of non-compliance would be voluntary and in violation of long-standing law (ECS 51050).

ECS 60252: Chapter 900, Statutes of 2004, amended this section to specify that one of the requirements for the Pupil Textbook and Instructional Materials Incentive Account is that districts are to ensure "to the extent practicable" that textbooks and instructional materials are purchased before the school year begins. Receiving money from the Pupil Textbook and Instructional Materials Incentive Account is voluntary on behalf of the district, therefore any requirements placed upon them as a condition of receipt of those funds is not reimbursable.

Section 11 of Chapter 902, Statutes of 2004: This section states the Legislature's encouragement that districts provide schools ranked in deciles 1 to 3 of the Academic Performance Index with first priority to review applications and resumes from credentialed teachers received by the district. The section only "encourages" this prioritization and the specific language does not place any new duties or requirements upon any school district or county superintendent of schools and therefore does not result in a reimbursable mandate.

School Accountability Report Card

ECS 33126: The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

> Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added ECSs 33126 and 35256 concerning School Accountability Report Cards (SARCs). The Statement of Decision on the School Accountability Report Cards (97-TC-21) claim, rendered by the Commission on Sate Mandates on July 28, 2005, determined that the various additions and amendments that have been made to the SARC over time do not constitute a new program or higher level of service within an existing program within the meaning of the California Constitution, Article XIII B, section 6 and do not impose costs mandated by the state pursuant to Government Code sections 17514 and 17556.
The Commission's 2005 Statement of Decision was largely based on ECS 35256, which states that "the School Accountability Report Card shall include, but is not limited to, the conditions listed in ECS 33126." By specifying that the SARC "is not limited to" the provisions set out originally in ECS 33126, and by requiring districts to periodically compare their SARC with the

statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

Consistent with the Commission's 2005 Statement of Decision on SARC, the Department of Finance asserts that SARC responsibilities added by the test claim do not constitute new state reimbursable mandated activities for school districts. The assertions made by the San Diego County Office of Education and Sweetwater Union High School District in this test claim are very similar to the assertions by claimants during the SARC reconsideration in 2005. However, as established in the Commission's 2005 Statement of Decision, the SARC is not limited to the provisions originally set out in the Education Code because the electorate recognized that the details of the model report card are subject to change and districts are required to comply with those changes.

Uniform Complaint Procedure

ECS 35186: This section requires school districts to report on a quarterly basis summarized data on the nature and resolution of all complaints against the school district to the county superintendent of schools and the governing board of the school district. Further, the section requires that the summary: (1) be presented at a regularly scheduled meeting of the governing board; (2) be organized by subject area of complaint; and (3) a distinction between resolved and unresolved complaints be made. Federal law mandates that complaint resolution processes be established. As a result, prior law and regulations already require local educational agencies to conduct and complete an investigation of most complaints within sixty days, and some complaints within thirty days. We note that this section simply requires school districts to provide final complaint reports that are already required by long-standing uniform complaint procedure law and regulations, to county offices of education and governing boards. Therefore, this section does not create a state reimbursable mandate for school districts. The specific language of this section only applies to school districts and does not impose any new duties upon county offices of education. Therefore, this section does not create a state reimbursable mandate for county offices of education either.

School Facilities Needs Assessment Grant Program

As noted above, Section 17556(e) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate if an appropriation in a Budget Act or other bill includes additional funding that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Chapter 899, Statutes of 2004 (SB 6), provided $25 million to school districts specifically to fund all the requirements of the School Facilities Needs Assessment Grant Program (SFNAGP). As a result, activities related to the SFNAGP identified in the ECSs and the California Code of Regulation Sections (CCRSs) below are not reimbursable as state funding was provided to fully fund the program.

ECS 17592.70: This section established the School Facilities Needs Assessment Grant Program (SFNAGP) requiring school districts to: (1) develop a comprehensive needs assessment; (2) use the comprehensive needs assessment as baseline data for the facilities inspection system required pursuant to ECS 17070.75(e); (3) provide the results of the assessment to the Office of Public School Construction (OPSC); (4) use any remaining funds not needed for the assessment for making facilities repairs identified in its assessment and report to the OPSC on the repairs completed and the cost of the repairs; and (5) submit to the OPSC an interim report regarding the progress made by the district in completing the assessments of all eligible schools.

California Code of Regulations Section (CCRS) 1859.310: This section requires a school site that qualifies for the SFNAGP to be allocated funds by the SAB in order to conduct a one-time comprehensive school facilities needs assessment and must complete and submit a Web-Based Needs Assessment to the OPSC for each school site that meets the provisions of Section 1859.311 (1859.311 specifies the school must have been identified on the list published by the Department of Education pursuant to ECS 17592.70(b) and be newly constructed prior to January 1, 2000).

CCRS 1859.312: This section specifies the amount of funding provided for each school for the SFNAGP. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

CCRS 1859.313: This section specifies the use of the SFNAGP grant funds for unbudgeted administrative or third party costs incurred as a result of performing the needs assessment and for repairs identified at any eligible school site within the local education agency where a needs assessment has been completed.

CCRS 1859.314: This section specifies the qualifications of the inspector completing the needs assessment. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

CCRS 1859.315: This section specifies the reporting requirements of an local education agency that receives SFNAGP funds pursuant to 1859.312 and ECS 17592.70(c), including: (1) completing a Certification of Eligibility and submitting it to OPSC; (2) completing a Web-Based Progress Report Survey and submitting it to OPSC; (3) completing a Web-Based Needs Assessment for each applicable site and submitting it to OPSC by January 1, 2006; and (4) completing Form SAB 61-02 to report all expenditures made with SFNAGP grant funds on an agency-wide basis and submitting it to OPSC by January 1, 2007.

CCRS 1859.316: This section specifies that a school district's SFNAGP expenditures shall be subject to audit. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

Other School Facilities Programs

As noted above, in Department of Finance v. Commission On State Mandates (2003) 30 Cal.4th 727, the California Supreme Court ruled that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity. The School Facilities Emergency Repair Program (ERP), the School Facilities Program (SFP), the Lease Purchase Program, the Deferred Maintenance Program, and the State Relocatable Classroom Program are voluntary programs. As such, the new requirements added to these programs in the ECSs and CCRSs below do not constitute a reimbursable mandate.

ECS 17592.72: This section established the ERP for schools ranked in deciles 1-3. The ERP was designed to address emergency facility repairs or replacement of structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. Funding is provided in the amount of $100 million or 50 percent of the unappropriated balance of the Proposition 98 Reversion Account, whichever amount is greater. The 2005 Budget Act

provided $196 million for the ERP and the 2006 Budget Act provided $137 million for the ERP to reimburse 100 percent of the facility emergency repair costs. Thus, this also meets the conditions of Government Code Section 17556(e) as stated above.

ECS 17592.73: This section lists the requirements for the State Allocation Board (SAB) in implementing and operating the SFNAGP and the ERP, including the following requirements: (1) adopt regulations and review and amend regulations as necessary; (2) establish and publish any procedures and policies; (3) apportion funds to eligible school districts; (4) provide technical assistance to school districts; (5) submit an interim status report on the SFNAGP to the Legislature by June 30, 2005; and (6) report to the Legislature and the Governor on expenditures and projections of the future expenditures related to the ERP, by June 30, 2008. Finance asserts that the activities in this section are not reimbursable, given that these activities are performed by a state agency, the SAB.

ECS 17070.75(e): This section requires a local education agency, as a condition of participation in the SFP or the receipt of Deferred Maintenance funds, to establish a facilities inspection system to ensure that each of its schools is maintained in good repair.

ECS 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089: These sections define good repair as meaning a facility is maintained in a manner that assures that it is clean, safe, and functional, as determined pursuant to an interim evaluation instrument developed by the OPSC by January 25, 2005. To evaluate the conditions of a school facility, the district may use the interim evaluation instrument or it may use an alternative evaluation instrument provided that it contains the minimum components addressed in the interim evaluation instrument. The interim evaluation instrument is designed so as not to require capital enhancements beyond the standards to which the facility was designed and constructed. A state standard of good repair is required to be determined by September 1, 2006. Ensuring that school facilities are in good repair has always been a requirement of the SFP, Lease Purchase Program, Deferred Maintenance Program, and the State Relocatable Classroom Program.

CCRS 1859.320: This section specifies that a school district seeking an ERP grant must complete and file a Form SAB 61-03 with OPSC.

CCRS 1859.325: This section specifies that school district facility maintenance accounts are subject to a review by OPSC to ensure that the local education agency is exercising due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

CCRS 1859.326: This section specifies that school district ERP expenditures are subject to audit by the OPSC. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing lists which accompanied your October 3, 2005 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 me at (916) 445-0328.

Sincerely,

Nicolas Schweizer
Assistant Program Budget Manager

Attachments

Attachment A

DECLARATION OF NICOLAS SCHWEIZER
DEPARTMENT OF FINANCE
CLAIM NO. 05-TC-04

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 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.

8/21/06
at Sacramento, CA

Nicolas Schweizer

PROOF OF SERVICE

Test Claim Name: Williams Case Implementation
Test Claim Number: 05-TC-04

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 August 18, 2006, 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
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
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

Ms. Lora Duzyk
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7309

Ms. Dianne L. Russo
Sweetwater Union High School District
1130 Fifth Ave.
Chula Vista, CA 91911-2896

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

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

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

Ms. Luisa Park
State Allocation Board
Office of Public School Construction
1130 K Street, Suite 400
Sacramento, CA 95814

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Steve Smith Enterprises, Inc.
Attention: Steve Smith
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

E-8
Department of Education
Fiscal and Administrative Services Division
Attention: Gerald Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

Cost Recovery Systems, Inc.
Attention: Annette Chinn
705-2 East Bidwell Street, #294
Folsom, CA 95630

Education Mandated Cost Network
Attn: Mr. Robert Miyashiro
Director of Management Consulting
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

Education Mandated Cost Network
Attn: Michael Johnston, Chair
Assistant Superintendent, Business
Clovis USD
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

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 August 18, 2006 at Sacramento, California.

Chad Rohrs

State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency
DEPARTMENT OF GENERAL SERVICES
Interagency Support Division • Office of Public School Construction

November 1, 2005

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 October 3, 2005, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School District asking the Commission to determine whether specified costs are incurred by the school district and the county office of education (hereafter, districts) as required by statute to implement legislation which resulted from the settlement of the *Eliezer Williams, et al, vs. State of California* case (Claim Number 05-TC-04).

The pieces of legislation implementing the *Williams* settlement are far reaching and cross several different agency areas. The claimants have identified several new duties that resulted from the *Williams* settlement legislation, which they assert are reimbursable State mandates. This response will only pertain to the area(s) for which State Allocation Board (Board) and the OPSC are directly responsible. 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 XIII B of the California Constitution and costs mandated by the State pursuant to Section 17514 of the Government Code?**

   Participation in the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (LPP), established through Education Code (EC) Sections 17000 through 17066, and the Leroy F. Greene State School Facilities Program of 1998 (SFP), established through EC Section 17070.10 et. seq., by districts is voluntary and not a compulsory activity. The Education Code does not compel districts to obtain funding from the State through the SFP as a condition of building or modernizing schools. Districts may choose to build facilities through the use of district-raised funds. Program elements are only required if districts choose to participate in the program.

   Participation in the Deferred Maintenance Program (DMP), established through EC Sections 17582 through 17588 and 17591 through 17592.5, is also voluntary on the part of 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.

1130 K Street, Suite 400 • Sacramento, California 95814 • (916) 445-3160

The State Relocatable Classroom Law of 1979 (SRCP), established under EC Section 17085 et. seq., is another elective program from which school districts may lease relocatable classrooms on an annual basis. As a condition of receipt of a building under the SRCP, a school district must certify that it will, at its own expense, make all necessary maintenance repairs, renewal and replacement to ensure that the relocatable classroom(s), furniture, and equipment are at all times kept in good repair, working order and condition.

As a result of the *Williams* legislation, good repair is now defined by the Interim Evaluation Instrument (IEI). To evaluate the conditions of a facility, the District may use the IEI, created by the OPSC, or it may use an alternative tool or system provided that it contains, at minimum, the components addressed in the IEI. Ensuring that school facilities are in good repair has always been a requirement of the SFP, LPP, DMP, or SRCP. Furthermore, the requirement for the establishment of a facility inspection system (FIS) to ensure that all schools are in good repair, as described under number 3 of the legislative digest, Statutes of 2004, Chapter 900, Senate Bill 550, of Section One, Part A of the test claim, is only required if a district chooses to participate in these programs. Therefore, it is our opinion that the declarations of the test claim that Chapter 900, Statutes of 2004, increased direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, and staff training and travel as a result of implementing the requirement for a FIS is unfounded, as it only applies to districts choosing to participate in the SFP, LPP, DMP, or SRCP.

Additionally, Part A, Section 2: Regulatory Mandates of the test claim pertains to the School Facilities Needs Assessment Grant Program and the Emergency Repair Program administered by the Board. The School Facilities Needs Assessment Grant Program requires districts to obtain the services of a qualified inspector, as specified in the regulations adopted by the Board, to conduct an in-depth assessment of the facilities at certain school sites. The regulations adopted by the Board did not expand upon the requirements for the assessment as set forth in Education Code 17592.70. This is a state-mandated program and funds are provided for this purpose. The Emergency Repair Program is a voluntary program. Districts may request reimbursement for the cost of repairs to building systems or components that are in a condition that poses a health and safety threat to students and staff while at school.

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.

Government 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 and other revenue sources including developer fees for capital outlay needs.

Government Code Section 17556(e):
The statute or executive order provides for offsetting savings to local agencies or school district which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the cost of the state mandate in an amount sufficient to fund the cost of the state mandate.

Senate Bill 6, Chapter 899, Statutes of 2004 (Alpert) allocated funding based on a per-pupil formula outlined in EC Section 17592.70 (c) for all impacted districts to perform the comprehensive needs assessment as required by the provisions of the School Facilities Needs Assessment Grant Program.

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?**

All districts that choose to participate in either the LPP or the SFP must establish a restricted account for the exclusive purpose of providing money for ongoing and major maintenance of school buildings in order to comply with the requirement that the project (funded under those programs) is at all times kept in good repair. School districts must deposit a minimum of two percent of the applicant school district General Fund budget for that fiscal year for each fiscal year throughout the term of the lease agreement of all projects construction under the LPP. School districts must deposit into this account a minimum of at least three percent of the applicant school district total General Fund expenditures each fiscal year for 20 years after the receipt of SFP funds (deposits in excess of two and a half percent may count toward the districts' DMP contributions for school districts choose to participate in the DMP).

For districts who participate in the DMP, the DMP receives its funding annually. The State matches the districts' deferred maintenance program contributions up to a specified level. Eligible projects may consist of major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing and floor systems as well as other purposes listed in Education Code Section 17582.

The SRCP does not provide funding to districts for lease payments and maintenance costs of the relocatable classrooms.

Each school site that is required to perform a needs assessment pursuant to the School Facilities Needs Assessment Grant Program is provided with ten dollars ($10) per pupil, a minimum of $7,500 per school, for this purpose. The Emergency Repair Program provides 100 percent reimbursement for the cost of repair or eligible replacement projects.

For the reasons stated above, the OPSC believes districts do not have to incur costs to establish a FIS as the requirement to establish a FIS is only required if participating under our voluntary programs. Furthermore, the statute that imposed the School Facilities Needs Assessment Grant Program included additional revenue that was specifically intended to fund the costs of the state mandate.

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 October 3, 2005 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 Chris DeLong, Policy Manager, at chris.delong@dgs.ca.gov or (916) 322-5263.

Sincerely,

LUISA M. PARK
Executive Officer
Office of Public School Construction

LMP:LK

Attachments

Attachment A

DECLARATION OF THE OFFICE OF PUBLIC SCHOOL CONSTRUCTION
CLAIM NO. 05-TC-04

I am currently employed by the State of California, Department of General Services, Office of Public School Construction (OPSC), am familiar with the duties of OPSC, and am authorized to make this declaration on behalf of OPSC.

I certify under penalty or 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.

November 1, 2005
at Sacramento, CA

Lori Morgan
Deputy Executive Officer

PROOF OF SERVICE

Test Claim Name: Williams Case Implementation
Test Claim Number: 05-TC-04

I, Robert Young, 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 1130 K Street, Suite 400, Sacramento, CA 95814.

On November 1, 2005, I served the attached recommendation of the Office of Public School Construction 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 Sates Mail at Sacramento, California; and (2) to State agencies in the normal pick up location at 1130 K Street, Suite 400, Sacramento, CA 95814, addressed as follows:

Mr. Keith B. Petersen
Six Ten & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Ms. Lora Duzyk
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7309

Ms. Dianne L. Russo
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91911-2896

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Ms. Jesse McGuinn
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

Ms. Harmeet Barkschat
Mandate Resources Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95360

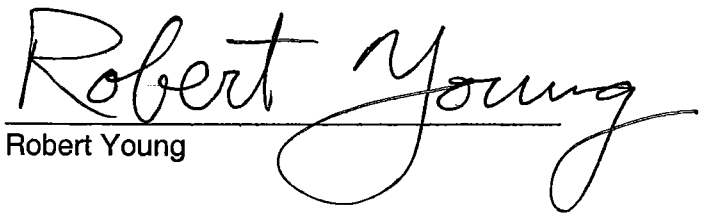
Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Mr. Robert Miyashiro
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

I declare under penalty or perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 1, 2005, at Sacramento, California.



Robert Young

DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 25, 2008

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 December 14, 2007, the Department of Finance has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School Districts (co-claimants) asking the Commission to determine whether specified costs incurred under various statutes and codes are reimbursable state mandated costs (Claim No. 07-TC-06, "Williams Case Implementation II").

This test claim references statutory and regulatory changes resulting from the enactment of Chapter 704, Statutes of 2006 (AB 607) and supplements Test Claim No. 05-TC-04, Williams Case Implementation (Williams Case I). AB 607 made various clean-up and technical changes to provisions of the Williams settlement addressing County Office of Education (COE) funding and reporting procedures, a statutory definition of "good repair", the Emergency Repair Program, the Uniform Complaint Process, and instructional materials sufficiency solutions. AB 607 also modified the methods of repayment by school districts for any funds owed to the state for State School Facilities Program (SFP) projects. Finally, AB 607 authorized the remaining unencumbered balance of funds appropriated to COEs for review and monitoring of schools and for conducting and reporting on site visits to remain available for expenditure through June 30, 2008. AB 607 did not create any new programs, rather, as noted above, it simply modified or added to the requirements of programs established by legislation implementing the Williams settlement and claimed to be reimbursable state mandated activities under Williams Case I.

Consistent with our position on the Williams Case I claims, we have concluded that the activities and requirements cited in this test claim do not constitute a state reimbursable mandate. We base this conclusion on the findings noted below, which merely duplicate the comments submitted in our letter dated August 18, 2006, in response to Williams Case I. However, as Williams Case I is still pending before the Commission, we reserve the right to modify our comments for Williams Case II in light of any decision rendered by the Commission for Williams Case I. Additionally, since many of the activities and issues contained in Williams Case I and Williams Case II overlap, we suggest the Commission consider consolidating the two test claims.

We first note that participation in voluntary and discretionary state programs, which may require certain conditions of participation, does not constitute a state mandate. In Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity. Consistent with this ruling, Williams settlement activities imposed on the following voluntary programs should not constitute a reimbursable mandate:

- The School Facilities Emergency Repair Program, the School Facilities Program, the Lease Purchase Program, the Deferred Maintenance Program, and the State Relocatable Classroom Program.
- The Pupil Textbook and Instructional Materials Incentive Account.

In addition, Section 17556(e) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate if an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs, 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. Consistent with this code section, the following programs receive(d) funding for Williams Settlement activities, and therefore, these activities should not constitute a reimbursable mandate:

- Chapter 899, Statutes of 2004 (SB 6) provided $25 million for the School Facilities Needs Assessment Grant Program.
- Though the Emergency Repair Program is a voluntary program, funding is also provided to fully fund school facilities emergency repair projects. The annual budget provides $100 million or 50 percent of the unappropriated balance of the Proposition 98 Reversion Account, whichever amount is greater. The following amounts have been provided by the Budget Act for the Emergency Repair Program: $196 in 2005-06, $137 million in 2006-07, and $200 million in 2007-08.
- Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools ranked in deciles 1 to 3, to report all instance of non-compliance with the instructional materials sufficiency requirements, to observe the sufficiency of textbooks, and to certify to the Superintendent of Public Instruction that school districts have corrected audit exceptions or that an acceptable plan of correction was submitted. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing lists which accompanied your December 14, 2007 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 Lenin Del Castillo at (916) 445-0328.

Sincerely,

Nicolas Schweizer
Assistant Program Budget Manager

Attachment

Attachment A

DECLARATION OF LENIN DEL CASTILLO
DEPARTMENT OF FINANCE
CLAIM NO. 07-TC-06

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 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2/25/08
at Sacramento, CA

Lenin Del Castillo

PROOF OF SERVICE

Test Claim Name: Williams Case Implementation II
Test Claim Number: 07-TC-06

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, X Floor, Sacramento, CA 95814.

On February 25, 2008, 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, X 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
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Mr. Paul Warren
925 L Street, Suite 1000
Sacramento, CA 95814

Ms. Lora Duzyk
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111-7309

Ms. Dianne L. Russo
Sweetwater Union High School District
1130 Fifth Ave.
Chula Vista, CA 91911-2896

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting and Reporting
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Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
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Ms. Harmeet Barkschat
Mandate Resource Services
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Sacramento, CA 95842

Mr. Rob Cook
State Allocation Board
Office of Public School Construction
1130 K Street, Suite 400
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Mr. David E. Scribner
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Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
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Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

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Attention: Steve Smith
4633 Whitney Avenue, Suite A
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E-8
Department of Education
Fiscal and Administrative Services Division
Attention: Gerald Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

Cost Recovery Systems, Inc.
Attention: Annette Chinn
705-2 East Bidwell Street, #294
Folsom, CA 95630

Education Mandated Cost Network
Attn: Mr. Robert Miyashiro
Director of Management Consulting
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

Education Mandated Cost Network
Attn: Michael Johnston, Chair
Assistant Superintendent, Business
Clovis USD
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 25, 2008 at Sacramento, California.

Annette Waite

State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency
DEPARTMENT OF GENERAL SERVICES
Interagency Support Division • Office of Public School Construction

April 14, 2008

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

As requested in your letter dated December 21, 2007, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School District, which asked the Commission to determine whether specified costs that are incurred by the school district and the county office of education (hereafter, districts) to implement various statute and codes are reimbursable (*"Williams Case Implementation II,"* Claim No. 07-TC-06).

The requirements that the test claim refers to are a result of Chapter 704, Statutes of 2006, (Assembly Bill (AB) 607 - Goldberg). AB 607 amended existing legislation that arose from the settlement of the *Eliezer Williams, et al, vs. State of California* case. The costs to implement that legislation are currently under review by the Commission on State Mandates (Claim Number 05-TC-04). Therefore, the current test claim (07-TC-06) is a supplement to 05-TC-04, and the following OPSC comments largely duplicate the comments provided for 05-TC-04.

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 XIII B of the California Constitution and costs mandated by the State pursuant to Section 17514 of the Government Code?

Participation in the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (LPP), established through Education Code (EC) Sections 17000 through 17066, and the Leroy F. Greene School Facilities Act of 1998, established through EC Section 17070.10 et al, seq., by districts is voluntary and not a compulsory activity. The Education Code does not compel districts to obtain funding from the State through the School Facility Program (SFP) as a condition of building or modernizing schools. Districts may choose to build facilities through the use of district-raised funds or other means. Therefore, program elements are only required if districts choose to participate in the program.

Participation in the Deferred Maintenance Program (DMP), established through EC Sections 17582 through 17588 and 17591 through 17592.5, is also voluntary on the part of districts. EC Section 17582 states that "...each school district *may* establish a restricted fund to be known as the 'district deferred maintenance fund'..." 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 or other means.

The State Relocatable Classroom Law of 1979 (SRCP), established under EC Section 17085 et al, seq., is an elective program from which school districts may lease relocatable classrooms on an annual basis. As a condition of receipt of a building under the SRCP, a

school district must certify that it will, at its own expense, make all necessary maintenance repairs, renewal and replacement to ensure that the relocatable classroom(s), furniture, and equipment are at all times kept in good repair, working order and condition.

As a result of AB 607, the Facility Inspection Tool (FIT) was developed by OPSC and approved by the State Allocation Board. The FIT replaces the Interim Evaluation Instrument (IEI) to determine whether a school facility is in good repair. To evaluate the conditions of a facility, the district may use the FIT, or it may use an alternative tool or system provided that it contains, at minimum, the components addressed in the FIT. Ensuring that school facilities are in good repair has always been a requirement of the SFP, LPP, DMP, or SRCP. Furthermore, the requirement for the establishment of a facility inspection system (FIS) to ensure that all schools are in good repair, as described in EC Section 17002, only applies if a district chooses to participate in these programs. Therefore, it is our opinion that the declarations of the test claim stating that AB 607 increased direct and indirect costs as a result of implementing the new FIS is unfounded, as it only applies to districts choosing to participate in the SFP, LPP, DMP, or SRCP.

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 (GC) Section 17556(d) precludes the Commission from finding that any provisions of the test claim impose costs mandated by the State.

GC 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 and other revenue sources including developer fees for capital outlay needs.

GC Section 17556(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 cost of the state-mandate in an amount sufficient to fund the cost of the state mandate.

Chapter 899, Statutes of 2004, (Senate Bill 6 - Alpert) allocated funding based on a per-pupil formula, outlined in EC Section 17592.70 (c), for all impacted districts to perform the comprehensive needs assessment, as required by the provisions of the School Facilities Needs Assessment Grant Program.

AB 607 allocated funding on a per-site basis formula, as outlined in EC Section 1242, for all impacted county offices of education to conduct site inspections to complete the FIT.

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?

All districts that choose to participate in either the LPP or the SFP must establish a restricted account for the exclusive purpose of providing money for ongoing and major maintenance of school buildings in order to comply with the requirement that the projects funded under those programs are at all times kept in good repair. In each year throughout the term of the lease agreement of all projects constructed under the LPP, school districts were required to deposit a minimum of two percent of the applicant school district's General Fund budget for each fiscal

year. Districts choosing to participate in the SFP must deposit into this account a minimum of three percent of the district's total General Fund expenditures each fiscal year for 20 years after the receipt of SFP funds. Deposits in excess of two and a half percent may count toward the districts' DMP contributions.

For districts who participate in the DMP, the DMP receives its funding annually. The State matches the districts' deferred maintenance program contributions up to a specified level. Eligible projects may consist of major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing and floor systems as well as other purposes listed in Education Code Section 17582.

The SRCP does not provide funding to districts for lease payments or maintenance costs of the relocatable classrooms.

County offices of education that are required to complete the FIT are provided $2,500 for each elementary school site, $3,500 for each middle or junior high school site, $5,000 for each high school. Additional funding is provided for sites where the enrollment increased by 20 percent from the previous year. An additional $1.00 per pupil funding is provided when a county office of education is required to visit more than 150 sites.

For the reasons stated above, the OPSC concludes that districts do not incur state-mandated costs for the implementation of a FIS as the FIS requirement only applies if the district chooses to participate in the voluntary school facility programs. Furthermore, the statute that imposed the School Facilities Needs Assessment Grant Program provided a one-time grant to offset the cost of the new requirements.

As required by the Commission's regulations, the OPSC is including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 3, 2005 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.

Please do not hesitate to call me at (916) 323-7252 with any questions you may have regarding this response.

Regards,

ROB COOK
Executive Officer

cc: Commission's Parties and Interested Parties List as of 12/21/07 (Enclosure)

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November 8, 2012

Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Williams I, II, III
05-TC-04; 07-TC-06; 08-TC-01

Dear Ms. Halsey:

Please be advised claimant submits the following comments in response to the Draft Staff Analysis ("DSA").

School Facilities Emergency Repair Program, Education Code sections 17592.72- 17592.73; California Code of Regulations, Title 2, sections 1859.302; 1859.320-1859.330; Application for Reimbursement and Expenditure Report.

The *Eliezer Williams, et al., v. State of California, et al. (Williams)* case was filed as a class action in 2000 in San Francisco County Superior Court. The plaintiffs included nearly 100 San Francisco County students, who filed suit against the State of California and state education agencies, including the California Department of Education (CDE). The basis of the lawsuit was that the agencies failed to provide public school students with equal access to instructional materials, safe and decent school facilities, and qualified teachers. *(http://www.cde.ca.gov/eo/ce/wc/wmslawsuit.asp)* In 2004, in response to the settlement, the Legislature created the Emergency Repair Program (ERP), which provides funding for critical health and safety repairs in certain low-performing schools.

Staff comments in the DSA state, "It might be argued that compliance with the terms of the Emergency Repair Program, and other Williams legislation, is required in order to carry out that preexisting constitutional and statutory duty to provide safe educational facilities, and thus to avoid liability."

Claimants contend school districts are both legally and practically compelled to perform emergency repairs based on the constitutional and statutory duty to provide facilities that are safe for

Williams I, II, III
05-TC-04; 07-TC-06; 08

students, staff and the general public occupying the facilities.[1] Other than the School Facilities Emergency Repair Program, local governmental entities are provided with "no reasonable alternative" and "no true choice but to participate" in the program, and incur the additional costs associated with an increased or higher level of service. Denying the test claim based on a lack of sufficient evidence, that seeking emergency repair program funds "is not the only reasonable means to carry out [school districts'] core mandatory functions" fails to comply with reasonable interpretation of statutory and case law.

"Practical compulsion" this does not mean void of any choice, rather a more reasonable standard, feasible and more suitable for the particular purpose. *(http://oxforddictionaries.com/definition/practical)* "Practical" compulsion must mean something less than legal compulsion, some element of discretion, for example a financially-strapped school district to use state funds instead of local funds.

Good Repair and the Facilities Inspection System, Education Code sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089.

"Former section 17002 contained definitions of a number of terms used in the State School Building Lease-Purchase Law of 1976, but did not expressly define "good repair," as used in the chapter. A number of other sections, as discussed below, referred generally to a requirement of maintaining facilities in good repair, but did not define good repair in any express terms or by any identifiable standard. SB 550 added to section 17002 a definition of "good repair," [2] as it applies to facilities, instructional spaces, and portable classrooms, and incorporated that definition by

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[1] Stated another way a reimbursable state mandate is created when the test claim statues or regulation established conditions under which the state, rather than a local entity has made a decision requiring the district to incur the cost of a new program. *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, 880 (2004).

[2] (d)(1) "Good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards to which the facility was designed and constructed.

(2) By January 25, 2005, the Office of Public School Construction shall develop the interim evaluation instrument based on existing prototypes and shall consult with county superintendents of schools and school districts during the development of the instrument. The Office of Public School Construction shall report and make recommendations to the Legislature and Governor not later than December 31, 2005, regarding options for state standards as an alternative to the interim evaluation instrument developed pursuant to paragraph (1). By September 1, 2006, the Legislature and Governor shall, by statute, determine the state standard that shall apply for subsequent fiscal years.

reference in a number of other facilities funding programs." (DSA p.17) Staff's conclusion the aforementioned voluntarily assumed activities are based on a local decision fails to consider a lawsuit settlement resulting in a new statute legislation requiring the maintenance of facilities in good repair.

"The definition of good repair under amended section 17002 provides more tangible and objective criteria by which the requirement is met, in part by requiring the OPSC to develop a measuring instrument for the local agencies to use to ensure good repair. The amended section gives LEAs the flexibility to develop their own evaluation instrument, so long as its contents meet the minimum requirements of the instrument developed by the OPSC. But none of these requirements leads inexorably to the conclusion that "good repair" is a new standard, or a new responsibility of schools and school districts." (DSA 67-68) This conclusion is based on conjecture that the changes to the statute are without purpose.

CONCLUSION

Based on the above, claimant contends the new activities stated above and imposed by the test claim statutes are reimbursable mandated activities.

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.

Arthur M. Palkowitz
Attorney for the Claimant

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
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November 15, 2012

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Halsey:

The Department of Finance has reviewed the Commission on State Mandates draft staff analysis of the consolidated test claims 05-TC-04, 07-TC-06, and 08-TC-01, *Williams Case Implementation I, II, and III*, submitted by the San Diego County Office of Education and the Sweetwater Union High School District, which will be considered at the Commission's December 7, 2012 hearing.

We do not believe that any of the statutes or executive orders alleged in the test claims constitute reimbursable state mandates. Therefore, we disagree with the staff's recommendation that the following activities constitute reimbursable state mandates:

- County Superintendents' Oversight and Monitoring Responsibilities: Fiscal Crisis and Management Team Referrals, Education Code section 42127.6;
- School Accountability Report Cards, Education Code sections 33126 and 33126.1;
- Williams Complaint Process, Education Code section 33186; and
- Review of Audits and Audit Exceptions, Education Code section 14501, 41020, and 41344.4.

We do not believe these activities constitute reimbursable state mandates for the following reasons:

1. **County Superintendents' Oversight and Monitoring Responsibilities: Fiscal Crisis and Management Team Referrals, Education Code section 42127.6**

   A. County superintendents have, pursuant to statutes effective prior to January 1, 1975, a responsibility to "superintend," or conduct oversight of, the schools in their respective counties.

The test claim statute states, "A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8."

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County offices of education have a longstanding responsibility, articulated in statutes that have been effective at least since January 1, 1975, to monitor and oversee the school districts within their counties. Education Code section 1240 states, "The county superintendent of schools shall do all of the following: (a) Superintend the schools of his or her county..." This section must be interpreted to broadly describe the function of a county office of education in relation to the school districts in the county, and it must be interpreted to include a broad range of activities related to monitoring and oversight. A narrower interpretation would render the statutory enactment meaningless. This section further states that the county superintendent ***shall*** visit and examine a school to observe their operations and learn of their problems. For this statute to have meaning, there must be a complementary requirement on the part of school districts to provide the county superintendent with any documents, including the studies, reports, evaluations, and audits included in the test claim legislation, necessary for him to "superintend" the schools in the county.

The test claim statute complements and reinforces this interpretation and simply names specific duties that are part of, not in addition to, to the longstanding requirements enumerated in the Education Code. School districts have always had an obligation to provide county superintendents with necessary documents in order for the county superintendent to conduct its oversight responsibilities.

B. If a school district commissions a study, it does so at its own discretion, and the requirement to provide that study to the county superintendent is a downstream activity stemming from the discretionary activity. Furthermore, when a county superintendent commissions a study of the school district, it should be understood that the county superintendent would receive a copy of that report.

A school district makes a decision to commission a study, report, evaluation, or audit at its own discretion. Therefore, any costs to provide a copy of these documents would stem from the district's discretionary activity. Additionally, a school district would already provide a county superintendent with a copy of a study, report, evaluation or audit that was commissioned by that same county superintendent, by the very nature of a report that is "commissioned." Therefore, because they would not result in additional costs, the statutory requirements cannot constitute a reimbursable state mandate.

2. School Accountability Report Cards, Education Code sections 33126 and 33126.1

Because the test claim statutes impose duties that are necessary to implement and are expressly included in a ballot measure approved by voters in a statewide election, it does not constitute a reimbursable state mandate, consistent with Government Code section 17556.

The test claim statutes identify specific elements that must be included in a School Accountability Report Card and implement the provisions of Proposition 98, which was approved by voters in the November 1998 statewide election and created the requirements for all schools to prepare and distribute School Accountability Report Cards.

Proposition 98 added Education Code section 33126. Section (a) of the statute states:

> *"(a) The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:*

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(1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.
(2) Progress toward reducing drop-out rates.
(3) Estimated expenditures per student, and types of services funded.
(4) Progress toward reducing class sizes and teaching loads.
(5) Any assignment of teachers outside their subject areas of competence.
(6) Quality and currency of textbooks and other instructional materials.
(7) The availability of qualified personnel to provide counseling and other student support services.
(8) Availability of qualified substitute teachers.
(9) Safety, cleanliness, and adequacy of school facilities.
(10) Adequacy of teacher evaluations and opportunities for professional improvement.
(11) Classroom discipline and climate for learning.
(12) Teacher and staff training, and curriculum improvement programs.
(13) Quality of school instruction and leadership.

"In developing the statewide model School Accountability Report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the Superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists, provided that the majority of the task force shall consist of practicing classroom teachers." [Emphasis added.]

As the Commission's draft staff analysis indicates, the initiative also specifies that its statutory provisions may only be amended by a two-thirds vote of the Legislature to further the purposes of the initiative.

The test claim statute implements the provisions of the voter-approved initiative related to the School Accountability Report Card. There are several indications that the proponents of Proposition 98 intended for the Legislature to take further action to make operational the categories listed in the initiative language:

- The initiative specifies that the model report card shall include specific elements but expressly states that the list is not comprehensive.
- The initiative requires that the Superintendent consult with the task force to develop the model report card, which serves as the basis for the report cards produced by individual schools. If the initiative were self-implementing, this type of consultation would be unnecessary.
- Most directly, the initiative specifically allows the Legislature to amend the statute to further the initiative's purposes.

The Legislative Counsel included the following in its digest of the test claim statute:

"This bill would require the school accountability report card to include information regarding the availability of sufficient textbooks and other instructional materials for each pupil, any needed maintenance of school facilities to ensure good repair, the misassignments of teachers, including misassignments of English learner teachers, and

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the number of vacant teacher positions for the most recent 3-year period. The bill would define "misassignment" and "vacant position" for this purpose."

The School Accountability Report Card elements that were added by the test claim statutes directly relate to the subjects contained in the original Proposition 98 language. They describe specific indicators related to instructional materials, teacher assignments, and school facilities, which were all addressed in Proposition 98. Therefore, the amendments should be interpreted to make operational the broad categories enumerated in the initiative language, not to add new requirements.

If these elements were not selected by the Legislature to make operational the categories identified in the initiative, the Superintendents of Public Instruction and individual school districts would make decisions about specific indicators to use. They would not be free of the responsibility to report information that fits into these categories. The state is not shifting additional responsibility to local governments; instead, it is selecting one alternative in implementing the initiative that school districts are expected to use.

Finally, because the initiative expressly states that the Legislature may only amend the statutes in furtherance of the initiative's purposes, the Commission must presume that the Legislature did so and that the statutes are necessary to implement the initiative and expressly permitted by the initiative.

3. *Williams* Complaint Process, Education Code section 33186

A. The Uniform Complaint Process alleged in the test claim is not "new and different."

Section (a) of Education Code section 35186, alleged in the test claim states, "A school shall ***use the uniform complaint process it has adopted*** as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12."

As the emphasized selection indicates, the test claim statute states that the complaint process used to address *Williams* complaints is the process the school district has already adopted. This statute does not add a new process but provides additional purposes for an existing process.

B. In the absence of the complaint process created by the test claim statute, a school district would still be required to respond to violations of applicable laws. There is no evidence that this process would result in greater costs than an alternative. This is especially true in cases in which the school district is violating applicable statutes and the complaint process corrects these errors.

The Uniform Complaint Process established by the test claim statute creates a structure for individuals to seek remedies if a school district violates applicable laws or regulations. In the absence of the process established in the statute, there would be an expectation that school

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districts develop and implement an alternative process for individuals to file complaints and for districts to respond to such complaints.

The costs to school districts related to the implementation of the complaint process created by the test claim statute must be compared with the costs of implementing an alternative process for the district to respond to complaints. There is no evidence that the Uniform Complaint Process costs more than the alternatives. Therefore, the test claim statute does not constitute a reimbursable state mandate.

This is especially relevant in cases in which a school district identifies and resolves deficiencies in response to a complaint made pursuant to the Uniform Complaint Process. In these cases, a school district's costs as a result of engaging in the Uniform Complaint Process are activities that result from the district's deficiency related to instructional materials, facilities conditions, or teacher vacancies or misassignments, and the district should be liable for these costs.

C. There is no reason to believe the requirement to post notices would result in any actual costs.

It is not reasonable to assume that there would be costs associated with posting a notice regarding the complaint procedures, pursuant to Education Code section 35186. The Legislature included in the test claim statute the exact text of an acceptable notice. A school district that chooses to modify the text should bear the costs of any modifications. There is no reason to believe that the costs of physically posting the notices would create any actual costs for the school district, even on a one-time basis.

4. <u>Review of Audits and Audit Exceptions, Education Code section 14501, 41020, 41344.4</u>

A. In approving Proposition 98 in 1988, voters required that schools that receive state funding shall implement an annual audit. Therefore, the test claim statute, including the requirements that the audit address* Williams *issues, implement a voter-approved initiative, consistent with Government Code section 17556.

Subsection (e) of Section 8.5 of Article XVI of the California Constitution, as amended by Proposition 98, states, "Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school." The *Williams* elements are basic requirements that all school districts must meet in expending state funding. Therefore, it is reasonable for the financial and compliance audits, performed pursuant to Education Code section 14501, to include verification of these requirements.

B. Given that the financial and compliance audits may address all of a school district's funds, the test claim statute should be interpreted to provide focus in how audit resources should be directed, rather than creating a higher level of service.

The existing financial and compliance audits program has always been able to address the categories of expenditures identified in the test claim statute. The statute should not be interpreted to create a higher level of service, but to identify the Legislature's use of audit resources.

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C. Review of audit exceptions are, and have been, a part of a county superintendent's responsibility to "superintend" the schools.

These are not new responsibilities for county offices of education. Prior to the enactment of the test claim statute, county superintendents would have had to address audit exceptions that related to the *Williams* elements, even though they were not expressly contained in statute. Furthermore, as discussed previously, any costs to the county offices are a part of the broad range of duties required to superintend the schools in the county. In order to carry out the responsibilities of superintending the school districts in a county, the county superintendent must ensure that the school district is operating schools that meet basic constitutional requirements, including those specifically included in the *Williams* statutes. To do so, the county superintendent must review these audit exceptions specifically related to these statutes.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Elisa Wynne, Principal Program Budget Analyst, at (916) 445-0328.

Sincerely,

NICK SCHWEIZER
Program Budget Manager

Supreme Court of California
WESTERN SECURITY BANK, N.A., Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;
BEVERLY HILLS BUSINESS BANK et al., Real Parties in Interest. VISTA PLACE ASSOCIATES et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; WESTERN SECURITY BANK, N.A., et al., Real Parties in Interest.

No. S037504.
Apr 7, 1997.

SUMMARY

After a partnership went into default on a loan it had obtained from a bank, the bank and the partnership modified the terms of the loan, and the general partners obtained unconditional, irrevocable standby letters of credit in favor of the bank as additional collateral. When the partnership again went into default, the bank foreclosed nonjudicially on the real property securing the loan and then presented the letters of credit to the issuer so as to cover the unpaid deficiency. The issuer brought an action for declaratory relief, seeking a declaration that it was not obligated to accept or honor the bank's tender of the letters of credit or, alternatively, a declaration that, if it was required to honor the letters, the partners were obligated to reimburse the issuer. The trial court entered a judgment decreeing that the issuer was required to honor the letters of credit and that the issuer was not barred from severally seeking reimbursement from the partners. (Superior Court of Los Angeles County, No. BC031239, Ernest George Williams, Judge.) The Court of Appeal, Second Dist., Div. Three, No. B066488, reversed, concluding that, under Code Civ. Proc., § 580d, part of the antideficiency law, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, may decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's nonjudicial foreclosure on real property. Thereafter, the Legislature enacted urgency legislation (Sen. Bill No. 1612), providing that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw (Code Civ. Proc., § 580.5). After the Supreme Court granted review and returned the matter to the Court of Appeal for reconsideration in light of the urgency legislation, the Court of Appeal concluded the legislation constituted a substantial change in existing law and thus was prospective only and had no impact on the Court of Appeal's earlier conclusions regarding the parties' rights and obligations.

The Supreme Court reversed the judgment of the Court of Appeal and remanded. The court held that the Court of Appeal erred in concluding that the enactment of Sen. Bill No. 1612 had no effect on this case. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision to clarify the parties' obligations when letters of credit support loans also secured by real property. The Court of Appeal mistook standby letters of credit for an attempt to evade the antideficiency and foreclosure laws by seeing them only as a form of guaranty, and also overlooked that the parties specifically intended the standby letters of credit to be additional security. When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory prohibition of deficiency judgments. Further, the Legislature manifestly intended the respective obligations of the parties to a letter of credit transaction to remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Sen. Bill No. 1612. Since the Legislature's action constituted a clarification of the state of the law before the Court of Ap-

peal's decision, rather than a change in the law, the legislation had no impermissible retroactive consequences, and it governed this case. (Opinion by Chin, J., with George, C. J., Baxter, and Brown, JJ., concurring. Concurring and dissenting opinion by Werdegar, J. Concurring and dissenting opinion by Mosk, J., with Kennard, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Letters of Credit § 10--Duties and Privileges of Issuer--Letters Presented to Cover Deficiency--Following Nonjudicial Foreclosure--Retroactivity of New Legislation.

In an action brought by the issuer of letters of credit against a bank that had loaned money to a partnership secured by real property, and against the partnership and its general partners, the Court of Appeal erred in concluding that the Legislature's postjudgment enactment of urgency legislation (Sen. Bill No. 1612), providing that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw (Code Civ. Proc., § 580.5), had no effect on a prior Court of Appeal holding in this case to the effect that, under Code Civ. Proc., § 580d, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, may decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's nonjudicial foreclosure on real property. The partners obtained the letters of credit as additional collateral for repayment of the loan and presented the letters for payment to the issuer after the bank foreclosed nonjudicially on the real property. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision to clarify the parties' obligations when letters of credit support loans also secured by real property. The Court of Appeal mistook standby letters of credit for an attempt to evade the antideficiency and foreclosure laws by seeing them only as a form of guaranty, and also overlooked that the parties specifically intended the standby letters of credit to be additional security. When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory prohibition of deficiency judgments. Further, the Legislature manifestly intended the respective obligations of the parties to a letter of credit transaction to remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Sen. Bill No. 1612. Since the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision, rather than a change in the law, the legislation had no impermissible retroactive consequences, and it governed this case.

[See 3 Witkin, Summary of Cal. Law (9th ed. 1987) Negotiable Instruments, § 11.]

(2) Statutes § 5--Operation and Effect--Retroactivity.

Statutes do not operate retrospectively unless the Legislature plainly intended them to do so. A statute has retrospective effect when it substantially changes the legal consequences of past events. A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. When the Legislature clearly intends a statute to operate retrospectively, the courts are obliged to carry out that intent unless due process considerations prevent them from doing so.

(3) Statutes § 5--Operation and Effect--Retroactivity--Amendments-- Purpose--Change in Law or Clarification.

A statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. The courts assume that the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. The courts' consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. Such a legislative act has no retrospective effect because the true meaning of the statute remains the same. One

such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation. An amendment that in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute. In such a case, the amendment may logically be regarded as a legislative interpretation of the original act-a formal change-rebutting the presumption of substantial change. Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power that the Constitution assigns to the courts.

(4) Statutes § 5--Operation and Effect--Retroactivity--Legislative Intent-- Change in Law or Clarification.

A subsequent expression of the Legislature as to the intent of a prior statute, although not binding on the court, may properly be used in determining the effect of a prior act. Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a clarification, the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question for the legislative body enacting the statute. Thus, where a statute provides that it clarifies or declares existing law, such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of statutory construction, the court must give effect to this intention unless there is some constitutional objection to it.

(5) Letters of Credit § 10--Duties and Privileges of Issuer--Independence Principle.

The liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. Under the independence principle, a letter of credit is an independent obligation of the issuing bank rather than a form of guaranty or a surety obligation (Cal. U. Com. Code, § 5114, subd. (1)). Thus, the issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. Absent fraud, the issuer must pay upon proper presentment, regardless of any defenses the customer may have against the beneficiary based in the underlying transaction.

(6) Letters of Credit § 10--Duties and Privileges of Issuer--Independence Principle--Effect of Draw on Letter of Credit.

A standby letter of credit is a security device created at the request of the customer/debtor that is an obligation owed independently by the issuing bank to the beneficiary/creditor. A creditor that draws on a letter of credit does no more than call on all of the security pledged for the debt. When it does so, it does not violate the prohibition of deficiency judgments.

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CHIN, J.

This case concerns the extent to which two disparate bodies of law interact when standby letters of credit are used as additional support for ***237** loan obligations secured by real property. On one side we have California's complex web of foreclosure and antideficiency laws that circumscribe enforcement of obligations secured by interests in real property. On the other side is the letter of credit law's "independence principle," the unique characteristic of letters of credit essential to their commercial utility.

The antideficiency statute invoked in this case is Code of Civil Procedure section 580d. That section precludes a judgment for any loan balance left unpaid after the lender's nonjudicial foreclosure under a power of sale in a deed of trust or mortgage on real property. (See *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35, 43-44 [27 Cal.Rptr. 873, 378 P.2d 97].) [FN1] The independence principle, in summary form, makes the letter of credit issuer's obligation to pay a draw conforming to the letter's terms completely separate from, and not contingent on, any underlying contract between the issuer's customer and the letter's beneficiary. (See, e.g., Cal. U. Com. Code, § 5114, subd. (1); *San Diego Gas & Electric Co. v. Bank Leumi* (1996) 42 Cal.App.4th 928, 933-934 [50 Cal.Rptr.2d 20].) [FN2]

FN1 In pertinent part, Code of Civil Procedure section 580d provides: "No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property or an estate for years therein hereafter executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust."

FN2 In 1996, the Legislature completely revised division 5 of the California Uniform Commercial Code, which pertains to letters of credit. (Stats. 1996, ch. 176.) The enactment of chapter 176 repealed the former division 5 and added a new division 5. (Stats. 1996, ch. 176, §§ 6, 7.) The new provisions apply to letters of credit issued after the statute's effective date. (Stats. 1996, ch. 176, § 14.) Letters of credit issued earlier are to be dealt with as though the repeal had not occurred. (Stats. 1996, ch. 176, § 15.) We have no occasion in this case to consider the provisions of the new division 5.

The Legislature (Stats. 1996, ch. 497, § 7) later amended a statutory reference found in California Uniform Commercial Code section 5114 as it existed before chapter 176 was enacted. This second legislative action might appear to restore the prior section 5114 from the repealed former division 5 and possibly leave two sections numbered 5114 in the new division 5. (See Cal. Const., art. IV, § 9; Gov. Code, § 9605.) We have no occasion in this case to address the meaning or effect of this seeming incongruity either.

All references to section 5114 in this opin-

ion are to California Uniform Commercial Code section 5114 as it existed before the 1996 legislation.

The Court of Appeal perceived a conflict between the public policies behind Code of Civil Procedure section 580d and the independence principle under the facts of this case. Here, after nonjudicial foreclosure of the real property security for its loan left a deficiency, the lender attempted to draw on the standby letters of credit of which it was the beneficiary. Ordinarily, the issuer's payment on a letter of credit would require the borrower to reimburse the issuer. (See § 5114, subd. (3).) The Court of Appeal considered that this result indirectly imposed on the borrower the equivalent of a ***238** prohibited deficiency judgment. The court concluded the situation amounted to a "fraud in the transaction" under section 5114, subdivision (2)(b), one of the limited circumstances justifying an issuer's refusal to honor its letter of credit.

The Legislature soon acted to express a clear, contrary intent. It passed Senate Bill No. 1612 (1993-1994 Reg. Sess.) (hereafter Senate Bill No. 1612) as an urgency measure specifically meant to abrogate the Court of Appeal's holding. (Stats. 1994, ch. 611, §§ 5, 6.) In brief, the aspects of Senate Bill No. 1612 we address provided that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw. After the Legislature's action, we returned the case to the Court of Appeal for reconsideration in light of the statutory changes. On considering the point, the Court of Appeal concluded the Legislature's action was prospective only and had no impact on the court's earlier analysis of the parties' rights and obligations. Accordingly, the Court of Appeal reiterated its former conclusions.

We again granted review and now reverse. The Legislature's manifest intent was that Senate Bill No. 1612's provisions, with one exception not involved here, would apply to all existing loans secured by real property and supported by outstanding letters of credit. We conclude the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision. The legislation therefore has no impermissible retroactive consequences, and we must give it the effect the Legislature intended.

I. Factual and Procedural Background

On October 10, 1984, Beverly Hills Savings and Loan Association, later known as Beverly Hills Business Bank (the Bank), loaned $3,250,000 to Vista Place Associates (Vista), a limited partnership, to finance the purchase of real property improved with a shopping center. Vista's general partners, Phillip F. Kennedy, Jr., John R. Bradley, and Peter M. Hillman (the Vista partners), each signed the promissory note. The loan transaction created a "purchase money mortgage," as it was secured by a "Deed of Trust and Assignment of Rents" as well as a letter of credit.

Vista later experienced financial difficulties, and the loan went into default. Vista asked the Bank to modify the loan's terms so Vista could continue operating the shopping center and repay the debt. The Bank and Vista agreed to a loan modification in February 1987, under which the three Vista partners each obtained an unconditional, irrevocable standby letter of ***239** credit in favor of the Bank in the amount of $125,000, for a total of $375,000. These were delivered to the Bank as additional collateral security for repayment of the loan. Under the modification agreement, the Bank was entitled to draw on the letters of credit if Vista defaulted or failed to pay the loan in full at maturity.

Western Security Bank, N.A. (Western) issued the letters of credit at the Vista partners' request. Each partner agreed to reimburse Western if it ever had to honor the letters. Under the agreement, each Vista partner gave Western a $125,000 promissory note. FN3

FN3 The parties' arrangements reflected a common use of letters of credit. A letter of

credit typically is an engagement by a financial institution (the issuer), made at the request of a customer (also referred to as the applicant or account party) to pay a specified sum of money to another person (the beneficiary) upon compliance with the conditions for payment stated in the letter of credit, i. e., presentation of the documents specified in the letter of credit. (See Gregora, *Letters of Credit in Real Property Finance Transactions* (Spring 1991) 9 Cal. Real Prop. J. 1, 1-2.)

A letter of credit transaction involves at least three parties and three separate and independent relationships: (1) the relationship between the issuer and the beneficiary created by the letter of credit; (2) the relationship between the customer and the beneficiary created by a contract or promissory note, with the letter of credit securing the customer's obligations to the beneficiary under the contract or note; and (3) the relationship between the customer and the issuer created by a separate contract under which the issuer agrees to issue the letter of credit for a fee and the customer agrees to reimburse the issuer for any amounts paid out under the letter of credit. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 2; *San Diego Gas & Electric Co. v. Bank Leumi*, *supra*, 42 Cal.App.4th at pp. 932-933; see *Voest-Alpine Intern. Corp. v. Chase Manhattan Bank* (2d Cir. 1983) 707 F.2d 680, 682; and *Colorado Nat. Bank, etc. v. Bd. of County Com'rs* (Colo. 1981) 634 P.2d 32, 36-38, for a discussion of the history and structure of letter of credit transactions.)

Letters of credit can function as payment mechanisms. For example, in sales transactions a letter of credit assures the seller of payment when parting with goods, while the conditions for payment specified in the letter of credit (often a third party's documentation, such as a bill of lading) assure the buyer the goods have been shipped before payment is made. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 3.) In the letter of credit's role as a payment mechanism, a payment demand occurs in the ordinary course of business and is consistent with full performance of the underlying obligations. (*Ibid.*)

The use of letters of credit has now expanded beyond that function, and they are employed in many other types of transactions in which one party requires assurances the other party will perform. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 3.) When used to support a debtor's obligations under a promissory note or other debt instrument, the so-called “standby” letter of credit typically provides that the issuer will pay the creditor when the creditor gives the issuer written certification that the debtor has failed to pay the amount due under the debtor's underlying obligation to the creditor. (*Ibid.*) Thus, a payment demand under a standby letter of credit indicates that there is a problem-either the customer is in financial difficulty, or the beneficiary and the customer are in a dispute. (*Ibid.*)

In December 1990, the Bank declared Vista in default on the modified loan. The Bank recorded a notice of default on February 13, 1991, and began ***240** nonjudicial foreclosure proceedings. (Civ. Code, § 2924.) It then filed an action against Vista seeking specific performance of the rents and profits provisions in the trust deed and appointment of a receiver.

On June 11, 1991, attorneys for the Bank and Vista signed a letter agreement settling the Bank's

lawsuit. In that agreement, Vista promised it would "not take any legal action to prevent [the Bank's] drawing upon [the letters of credit] after the Trustee's Sale of the Vista Place Shopping Center, ... provided that the amount of the draw by [the Bank] does not exceed an amount equal to the difference between [Vista's] indebtedness and the successful bid of the Trustee's Sale." Vista promised as well not to take any draw-related legal action against the Bank after the Bank's draw on the letters of credit.

On June 13, 1991, the Bank concluded its nonjudicial foreclosure on the shopping center under the power of sale in its deed of trust. The Bank was the only bidder, and it purchased the property. The sale left an unpaid deficiency of $505,890.16.

That same day, the Bank delivered the three letters of credit and drafts to Western and demanded payment of their full amount, $375,000. The Bank never sought to recover the $505,890.16 deficiency from Vista or the Vista partners. About the time that Western received the Bank's draw demand, it also received a written notice from the Vista partners' attorney. The notice asserted that Code of Civil Procedure section 580d barred Western from seeking reimbursement from the Vista partners for any payment on the letters of credit, and that if Western paid, it did so at its own risk.

Western did not honor the Bank's demand for payment on the letters of credit. Instead, on June 24, 1991, Western filed this declaratory relief action against the Bank, as well as Vista and the Vista partners (collectively, the Vista defendants). Western's complaint sought: (1) a declaration that Western is not obligated to accept or honor the Bank's tender of the letters of credit; or, alternatively, (2) a declaration that, if Western must pay on the letters of credit, the Vista partners must reimburse Western according to the terms of their promissory notes.

The Vista defendants cross-complained against Western for cancellation of their promissory notes and for injunctive relief. In July 1991, the Bank filed a first amended cross-complaint, alleging Western wrongfully dishonored the letters of credit, and the Vista defendants breached the agreement not to take legal action to prevent the Bank's drawing on the letters of credit.

The Bank, Western, and the Vista defendants each sought summary judgment. After several hearings and discussions with counsel, which produced a stipulation on the key facts, the court issued its decision on January ***241** 23, 1992. By its minute order of that date, the court (l) denied the three motions for summary judgment, (2) severed the Vista defendants' cross-complaint against Western for cancellation of the promissory notes, (3) severed the Bank's amended cross-complaint against the Vista defendants for breach of the letter agreement, and (4) issued a tentative decision on the trial of Western's complaint for declaratory relief and the Bank's amended cross-complaint against Western for wrongful dishonor of the letters of credit.

The trial court signed and filed the judgment on March 26, l992. The court decreed the Bank was entitled to recover $375,000 from Western, plus interest at 10 percent from June 13, 1991, the date of the Bank's demand, and costs of suit. The court further decreed Western could seek reimbursement from the Vista partners severally, and each Vista partner was obligated to reimburse Western, pursuant to the promissory notes in favor of Western, for its payment to the Bank. Western appealed, and the Vista defendants cross-appealed.

The Court of Appeal, after granting rehearing and accepting briefing by several amici curiae, issued an opinion reversing the trial court on December 21, 1993. In that opinion, the court concluded: "We hold that, under section 580d of the Code of Civil Procedure, an integral part of California's long-established antideficiency legislation, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, *may* decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's *nonjudicial* foreclosure on real

property. Such a use of standby letters of credit constitutes a 'defect not apparent on the face of the documents' within the meaning of California Uniform Commercial Code section 5114, subdivision (2)(b), and therefore such permissive dishonor does no offense to the 'independence principle.' " (Original italics, fn. omitted.)

In that first opinion, the Court of Appeal also solicited the Legislature's attention: "To the extent that this result will present problems for real estate lenders with respect to the way they now do business (as the Bank and several amici curiae have strongly suggested), it is a matter which should be addressed to the Legislature. We have been presented with two important but conflicting statutory policies. Our reconciliation of them in this case may not prove as satisfactory in another factual context. It is therefore a matter which should receive early legislative attention." (Fn. omitted.)

We granted review, and while the matter was pending, the Legislature passed Senate Bill No. 1612, an urgency statute that the Governor signed on ***242** September 15, 1994. Senate Bill No. 1612 affected four statutes. Section 1 of the bill amended Civil Code section 2787 to state that a letter of credit is not a form of suretyship obligation. (Stats. 1994, ch. 611, § 1.) Section 2 of the bill added Code of Civil Procedure section 580.5, explicitly excluding letters of credit from the purview of the antideficiency laws. (Stats. 1994, ch. 611, § 2.) Section 3 of the bill added Code of Civil Procedure section 580.7, which declares unenforceable letters of credit issued to avoid defaults on purchase money mortgages for owner-occupied real property containing one to four residential units. (Stats. 1994, ch. 611, § 3.) Section 4 of the bill made "technical, nonsubstantive changes" to section 5114 . (Stats. 1994, ch. 611, § 4; Legis. Counsel's Dig., Sen. Bill No. 1612 (1993-1994 Reg. Sess.).)

The Legislature made its purpose explicit: "It is the intent of the Legislature in enacting Sections 2 and 4 of this act to confirm the independent nature of the letter of credit engagement and to abrogate the holding [of the Court of Appeal in this case] .... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either." (Stats. 1994, ch. 611, § 5.) The same purpose was echoed in the bill's statement of the facts calling for an urgency statute: "In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately." (Stats. 1994, ch. 611, § 6.)

After the Legislature enacted Senate Bill No. 1612, we requested the parties' views on its effect. On February 2, 1995, after considering the parties' responses, we transferred the case to the Court of Appeal with directions to vacate its decision and reconsider the cause in light of the Legislature's action.

On reconsideration, the Court of Appeal determined Senate Bill No. 1612 constituted a substantial change in existing law. Believing there was no clear evidence that the Legislature intended the statute to operate retrospectively, the Court of Appeal thought Senate Bill No. 1612 had only prospective application. Therefore, Senate Bill No. 1612 did not affect the Court of Appeal's prior conclusions on the parties' rights and obligations. The Court of Appeal filed its second opinion on September 29, 1995, mostly repeating its prior reasoning and conclusions. We granted the Bank's petition for review.

II. Discussion

(1a) As the Court of Appeal recognized, we first must determine the effect on this case of the Legislature's enactment of Senate Bill No. 1612. ***243** (2) A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d

1188, 1207-1208 [246 Cal.Rptr. 629, 753 P.2d 585]; *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393 [182 P.2d 159].) A statute has retrospective effect when it substantially changes the legal consequences of past events. (*Kizer v. Hanna* (1989) 48 Cal.3d 1, 7 [255 Cal.Rptr. 412, 767 P.2d 679].) A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. (*Ibid.*) Of course, when the Legislature clearly intends a statute to operate retrospectively, we are obliged to carry out that intent unless due process considerations prevent us. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587, 592 [128 Cal.Rptr. 427, 546 P.2d 1371].)

(3) A corollary to these rules is that a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. (Cf. *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568 [20 Cal.Rptr.2d 341, 853 P.2d 507].) Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484 [116 P.2d 71]; *GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 Cal.App.4th 827, 833 [2 Cal.Rptr.2d 441]; see *Balen v. Peralta Junior College Dist.* (1974) 11 Cal.3d 821, 828, fn. 8 [114 Cal.Rptr. 589, 523 P.2d 629].) Such a legislative act has no retrospective effect because the true meaning of the statute remains the same. (*Stockton Sav. & Loan Bank v. Massanet* (1941) 18 Cal.2d 200, 204 [114 P.2d 592]; *In re Marriage of Reuling* (1994) 23 Cal.App.4th 1428, 1440 [28 Cal.Rptr.2d 726]; *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 976-977 [185 Cal.Rptr. 49].)

One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation: " 'An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute.... [¶] If the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act-a formal change-rebutting the presumption of substantial change.' (1A Singer, Sutherland Statutory Construction (5th ed. 1993) § 22.31, p. ***244** 279, fns. omitted.)" (*RN Review for Nurses, Inc. v. State of California* (1994) 23 Cal.App.4th 120, 125 [28 Cal.Rptr.2d 354].) FN4

FN4 The " 'presumption of substantial change' " mentioned in the quoted passage refers to the presumption that amendatory legislation accomplishing substantial change is intended to have only prospective effect. Some courts have thought changes categorized as merely formal or procedural present no problem of retrospective operation. However, as mentioned above, California has rejected this type of classification: "In truth, the distinction relates not so much to the form of the statute as to its effects. If substantial changes are made, even in a statute which might ordinarily be classified as procedural, the operation on existing rights would be retroactive because the legal effects of past events would be changed, and the statute will be construed to operate only in futuro unless the legislative intent to the contrary clearly appears." (*Aetna Cas. & Surety Co. v. Ind. Acc. Com.*, *supra*, 30 Cal.2d at p. 394; cf. *Kizer v. Hanna*, *supra*, 48 Cal.3d at pp. 7-8.)

Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpreta-

tion of a statute is an exercise of the judicial power the Constitution assigns to the courts. (*California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 213 [187 P.2d 702]; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935]; see *Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8 [185 Cal.Rptr. 582].) Indeed, there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment when a gulf of decades separates the two bodies. (Cf. *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 51-52 [276 Cal.Rptr. 114, 801 P.2d 357].) Nevertheless, the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them.

(4) "[A] subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act." (*California Emp. etc. Com. v. Payne*, *supra*, 31 Cal.2d at pp. 213-214.) Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a "clarification," the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. (*Id.* at p. 214.) Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question for the legislative body enacting the statute. (*Evangelatos v. Superior Court*, *supra*, 44 Cal.3d at p. 1206.) Thus, where a statute provides that it clarifies or declares existing law, "[i]t is obvious that such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of statutory construction, we must give effect to this intention unless there is some constitutional objection thereto." (***245***California Emp. etc. Com. v. Payne*, *supra*, 31 Cal.2d at p. 214; cf. *City of Sacramento v. Public Employees' Retirement System* (1994) 22 Cal.App.4th 786, 798 [27 Cal.Rptr.2d 545]; *City of Redlands v. Sorensen* (1985) 176 Cal.App.3d 202, 211 [221 Cal.Rptr. 728].)

With respect to Senate Bill No. 1612, the Legislature made its intent plain. Section 5 of the bill states, in part: "It is the intent of the Legislature in enacting Sections 2 and 4 of this act [FN5] to confirm the independent nature of the letter of credit engagement and to abrogate the holding in [the Court of Appeal's earlier opinion in this case], that presentment of a draft under a letter of credit issued in connection with a real property secured loan following foreclosure violates Section 580d of the Code of Civil Procedure and constitutes a 'fraud ... or other defect not apparent on the face of the documents' under paragraph (b) of subdivision (2) of Section 5114 of the Commercial Code.... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either." (Stats. 1994, ch. 611, § 5.)

FN5 Section 2 of Senate Bill No. 1612 added Code of Civil Procedure section 580.5, which provides in pertinent part: "(b) With respect to an obligation which is secured by a mortgage or a deed of trust upon real property or an estate for years therein and which is also supported by a letter of credit, neither the presentment, receipt of payment, or enforcement of a draft or demand for payment under the letter of credit by the beneficiary of the letter of credit nor the honor or payment of, or the demand for reimbursement, receipt of reimbursement or enforcement of any contractual, statutory or other reimbursement obligation relating to, the letter of credit by the issuer of the letter of credit shall, whether done before or after the judicial or nonjudicial foreclosure of the mortgage or deed of trust or conveyance in lieu thereof, constitute any of the following: [¶] (1) An action

> within the meaning of subdivision (a) of Section 726, or a failure to comply with any other statutory or judicial requirement to proceed first against security. [¶] (2) A money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726, or the functional equivalent of any such judgment. [¶] (3) A violation of Section 580a, 580b, 580d, or 726." (Code Civ. Proc., § 580.5, subd. (b), as added by Stats. 1994, ch. 611, § 2.)
>
> Section 4 of Senate Bill No. 1612 made certain technical, nonsubstantive changes to section 5114, which embodies the independence principle applicable to letter of credit payment obligations. (§ 5114, as amended by Stats. 1994, ch. 611, § 4.)

The Legislature's intent also was evident in its statement of the facts justifying enactment of Senate Bill No. 1612 as an urgency statute: "In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately." (Stats. 1994, ch. 611, § 6.) The Legislature's unmistakable focus was the disruptive effect of the Court of Appeal's decision on the expectations of parties to transactions where a letter of credit was issued in connection with a loan secured by real property. By abrogating the Court of Appeal's decision, the ***246** Legislature intended to protect those parties' expectations and restore certainty and stability to those transactions. If the Legislature acts promptly to correct a perceived problem with a judicial construction of a statute, the courts generally give the Legislature's action its intended effect. (See, e.g., *Escalante v. City of Hermosa Beach* (1987) 195 Cal.App.3d 1009, 1020 [241 Cal.Rptr. 199]; *City of Redlands v. Sorensen, supra*, 176 Cal.App.3d at pp. 211-212; *Tyler v. State of California, supra*, 134 Cal.App.3d at pp. 976-977; but see *Del Costello v. State of California, supra*, 135 Cal.App.3d at p. 893, fn. 8 [courts need not accept Legislature's interpretation of statute].) The plain import of Senate Bill No. 1612 is that the Legislature intended its provisions to apply immediately to existing loan transactions secured by real property and supported by outstanding letters of credit, including those in this case.

We next consider whether Senate Bill No. 1612 effected a change in the law, or instead represented a clarification of the state of the law before the Court of Appeal's decision. As mentioned earlier, Senate Bill No. 1612 amended two code sections (§ 5114; Civ. Code, § 2787) and added two sections to the Code of Civil Procedure (§§ 580.5, 580.7). The two code sections Senate Bill No. 1612 amended plainly made no substantive change in the law. The amendments to section 5114, which concerns the issuer's duty to honor a draft conforming to the letter of credit's terms, were "technical, nonsubstantive changes," as the Legislative Counsel's Digest correctly noted. (See Legis. Counsel's Dig., Sen. Bill No. 1612 (1993-1994 Reg. Sess.).)

In the other section amended, Civil Code section 2787, Senate Bill No. 1612 added a statement reflecting an established formal distinction: "A letter of credit is not a form of suretyship obligation." (Stats. 1994, ch. 611, § 1.) Civil Code section 2787 defines a surety or guarantor as "one who promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefor." Generally, a surety's liability for an obligation is secondary to, and derivative of, the liability of the principal for that obligation. (See, e.g., Civ. Code, § 2806 et seq.)

(5) By contrast, the liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. (See *San Diego Gas & Electric Co. v. Bank Leumi, supra*, 42 Cal.App.4th at pp. 933-934; *Paramount Export Co. v. Asia Trust Bank, Ltd.* (1987) 193 Cal.App.3d 1474, 1480 [238 Cal.Rptr. 920]; *Lumbermans Acceptance Co. v. Security Pacific Nat.*

Bank (1978) 86 Cal.App.3d 175, 178 [150 Cal.Rptr. 69].) Thus, as the amendment to Civil Code section 2787 made clear, existing law viewed a ***247** letter of credit as an independent obligation of the issuing bank rather than as a form of guaranty or a surety obligation. (See, e.g., Dolan, The Law of Letters of Credit: Commercial and Standby Credits (rev. ed. 1996) § 2.10[1], pp. 2-61 to 2-63 (Dolan, Letters of Credit); 3 White & Summers, Uniform Commercial Code (4th ed. 1995) Letters of Credit, § 26-2, pp. 112-117.) The issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. (*San Diego Gas & Electric Co. v. Bank Leumi, supra*, 42 Cal.App.4th at p. 934.) Absent fraud, the issuer must pay upon proper presentment regardless of any defenses the customer may have against the beneficiary based in the underlying transaction. (*Ibid.*)

Senate Bill No. 1612's remaining statutory addition with which we are concerned, FN6 Code of Civil Procedure section 580.5, specified that letter of credit transactions do not violate the antideficiency laws contained in Code of Civil Procedure sections 580a, 580b, 580d, or 726. (Code Civ. Proc., § 580.5, subd. (b)(3).) In particular, the new section specifies that a lender's resort to a letter of credit, and the issuer's concomitant right to reimbursement, do not constitute an "action" under Code of Civil Procedure section 726, or a failure to proceed first against security, regardless of whether they come before or after a foreclosure. (Code Civ. Proc., § 580.5, subd. (b)(1).) Similarly, letter of credit draws and reimbursements do not constitute deficiency judgments "or the functional equivalent of any such judgment." (Code Civ. Proc., § 580.5, subd. (b)(2).)

> FN6 We do not address the effect of section 3 of Senate Bill No. 1612, which added section 580.7 to the Code of Civil Procedure. This section provides, in pertinent part: "(b) No letter of credit shall be enforceable by any party thereto in a loan transaction in which all of the following circumstances exist: [¶] (1) The customer is a natural person. [¶] (2) The letter of credit is issued to the beneficiary to avoid a default of the existing loan. [¶] (3) The existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer. [¶] (4) *The letter of credit is issued after the effective date of this section.*" (Code Civ. Proc., § 580.7, subd. (b), italics added, as added by Stats. 1994, ch. 611, § 3.) The italicized language, not found in the other statutory changes made by Senate Bill No. 1612, suggests the Legislature intended section 580.7 to have prospective effect only. However, this case does not involve any interpretation of this section or its effect, and so we express no view on those matters.

The Court of Appeal saw Code of Civil Procedure section 580.5 as a change in the law, in large part, because of the analogy it employed to examine the use of standby letters of credit as additional support for loans also secured by real property. The Bank argued a standby letter of credit was the functional equivalent of cash collateral. The Court of Appeal disagreed, instead analogizing standby letters of credit to guaranties and emphasizing the similarities of purpose and function: "No matter how it may be regarded ***248** by the beneficiary, a standby letter is certainly not cash or its equivalent from the perspective of the debtor; in reality, it represents his promise to provide *additional funds* in the event of his *future* default or deficiency, thus confirming its use not as a means of payment but rather as an instrument of guarantee." (Original italics.) The Court of Appeal relied on *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40 [71 Cal.Rptr. 64] (*Gradsky*) and *Commonwealth Mortgage Assur-*

ance Co. v. Superior Court (1989) 211 Cal.App.3d 508 [259 Cal.Rptr. 425] (*Commonwealth Mortgage*).

Gradsky held that a creditor, after nonjudicial foreclosure of the real property security for a note, could not recover the note's unpaid balance from a guarantor. (*Gradsky, supra,* 265 Cal.App.2d at p. 41.) Significantly, the court did not find Code of Civil Procedure section 580d's prohibition of deficiency judgments barred the creditor's claim on the guarantor: "It is barred by applying the principles of estoppel. The estoppel is raised as a matter of law to prevent the creditor from recovering from the guarantor after the creditor has exercised an election of remedies which destroys the guarantor's subrogation rights against the principal debtor." (*Gradsky, supra,* 265 Cal.App.2d at p. 41.)

The court noted that the guarantor, after payment, ordinarily would be equitably subrogated to the rights and security formerly held by the creditor. (*Gradsky, supra,* 265 Cal.App.2d at pp. 44-45; cf. Civ. Code, §§ 2848, 2849.) However, where the creditor first resorts to nonjudicial foreclosure, the guarantor could not acquire any subrogation rights from the creditor because under Code of Civil Procedure section 580d, the nonjudicial sale eliminated both the security and the possibility of a deficiency judgment against the debtor. (*Gradsky, supra,* 265 Cal.App.2d at p. 45.) Because the creditor has a duty not to impair the guarantor's remedies against the debtor, the court held the creditor is estopped from pursuing the guarantor after electing a remedy-nonjudicial foreclosure-that eliminated the security for the debt and curtailed the possibility of the guarantor's reimbursement from the debtor. (*Id.* at pp. 46-47.)

However, the rules applicable to surety relationships do not govern the relationships between the parties to a letter of credit transaction. (See Dolan, Letters of Credit, *supra,* § 2.10[1], pp. 2-62 to 2-63.) At the time of this case's transactions, a majority of courts did not grant subrogation rights to an issuer that honored a draw on a credit; the issuer satisfied its own primary obligation, not the debt of another. (*Tudor Dev. Group, Inc. v. U.S. Fid. & Guar. Co.* (3d Cir. 1992) 968 F.2d 357, 361-363; see 3 White & Summers, Uniform Commercial Code, *supra,* Letters of Credit, § 26-15, pp. 211-212; but see Cal. U. Com. Code, § 5117; fn. 2, *ante,* at pp. 237-238.) Nor does the ***249** beneficiary of a credit owe any obligations to the issuer; literal compliance with the letter of credit's terms for payment is all that is required. (Cf. *Paramount Export Co. v. Asia Trust Bank, Ltd., supra,* 193 Cal.App.3d at p. 1480; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank, supra,* 86 Cal.App.3d at p. 178.)

Gradsky contains additional language suggesting a much broader rule than its holding and analysis warranted. Going beyond the subrogation theory underlying its holding, the court observed: "If ... the guarantor ... can successfully assert an action in assumpsit against [the debtor] for reimbursement, the obvious result is to permit the recovery of a 'deficiency' judgment against the debtor following a nonjudicial sale of the security under a different label. It makes no difference to [the debtor's] purse whether the recovery is by the original creditor in a direct action following nonjudicial sale of the security, or whether the recovery is in an action by the guarantor for reimbursement of the same sum." (*Gradsky, supra,* 265 Cal.App.2d at pp. 45-46.) The court also said: "The Legislature clearly intended to protect the debtor from personal liability following a nonjudicial sale of the security. No liability, direct or indirect, should be imposed upon the debtor following a nonjudicial sale of the security. To permit a guarantor to recover reimbursement from the debtor would permit circumvention of the legislative purpose in enacting section 580d." (*Id.* at p. 46.) In view of the reasoning of the court's holding, these additional observations were unnecessary to the case's determination.

Commonwealth Mortgage followed *Gradsky* to hold a mortgage guaranty insurer could not enforce indemnity agreements to obtain reimbursement

from the debtors for the insurer's payment to the lender after the lender's nonjudicial sale of its real property security. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 517.) The court said the mortgage guaranty insurance policy served the same purpose as the guaranty in *Gradsky*, and thus *Gradsky* would bar the insurer from being reimbursed under subrogation principles. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 517.) The court found the substitution of indemnity agreements for subrogation rights did not distinguish the case from *Gradsky*. Relying on the rule that a principal obligor incurs no additional liability on a note by also being a guarantor of it, the court said the agreements added nothing to the debtors' existing liability. (*Commonwealth Mortgage, supra* , 211 Cal.App.3d at p. 517.) Thus, the court said the indemnity agreements could not be viewed as independent obligations. (*Ibid.*) Instead, the court concluded they were invalid attempts to have the debtors waive in advance the statutory prohibition against deficiency judgments. (*Ibid.*)

As did *Gradsky*, *Commonwealth Mortgage* also inveighed against subterfuges that thwart the purposes of Code of Civil Procedure section 580d. ***250** (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at pp. 515, 517.) "Although section 580d applies by its specific terms only to actions for 'any deficiency upon a note secured by a deed of trust' and not to actions based upon other obligations, the proscriptions of section 580d cannot be avoided through artifice [citation] .... In determining whether a particular recovery is precluded, we must consider whether the policy behind section 580d would be violated by such a recovery. [Citation.]" (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 515.) Thus, as did the *Gradsky* court, the *Commonwealth Mortgage* court augmented its opinion with concepts unnecessary to its determination of the case. FN7

FN7 The precedential value of such statements in *Commonwealth Mortgage* also is clouded by a factual enigma the court left unresolved. As the Court of Appeal recognized, the lender in that case purchased the real property security at the trustee's sale for a full credit bid, which ought to have satisfied the debt. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 512, fn. 3.) Despite the apparent absence of any deficiency, the court deemed it unnecessary to decide whether a deficiency in fact remained before discussing the effect of Code of Civil Procedure section 580d's prohibition of deficiency judgments. (*Commonwealth Mortgage, supra*, 211 Cal.App.3d at p. 515.)

The Court of Appeal in this case extrapolated from the *Gradsky* and *Commonwealth Mortgage* precedents a rule that swept far beyond their origins in guaranty and suretyship relationships: "Not only is a *creditor* prevented from obtaining a deficiency judgment against the debtor, but no other person is permitted to obtain what would, in effect, amount to a deficiency judgment." (Original italics.) The Court of Appeal apparently concluded a transaction has such an effect if it "has the practical consequence of requiring the debtor to pay *additional money* on the debt *after* default or foreclosure." (Original italics.) "Thus, we preserve the principle, clearly established by *Gradsky* and *Commonwealth* [*Mortgage*], that a lender should not be able to utilize a device of any kind to avoid the limitations of section 580d; and we apply that principle here to standby letters of credit." However, as we have seen, neither *Gradsky* nor *Commonwealth Mortgage* established such a principle as a rule of law. Instead, their statements accentuated the courts' vigilance regarding attempted evasions of the antideficiency and foreclosure laws.

(1b) The Court of Appeal mistook standby letters of credit for such an attempt by seeing them only as a form of guaranty. The court analogized the standby letter of credit to a guaranty because of the perceived functional similarities. One consequence of that analogy was that the court applied

to standby letters of credit a rule whose legal justifications originated in the subrogation rights owed to sureties. However, as discussed before, letters of credit-standby or otherwise-are not a form of suretyship, and the rights of the parties to these transactions are not governed by suretyship principles. ***251** Further, suretyship involves no counterpart to the independence principle essential to letters of credit.

While analogies can improve our understanding of how and why letters of credit are useful, analogies cannot substitute for recognizing the letters' unique qualities. The authors of one leading treatise aptly summarized the point: "In short, a letter of credit is a letter of credit. As Bishop Butler once said, 'Everything is what it is and not another thing.' " (3 White & Summers, Uniform Commercial Code, *supra*, Letters of Credit, § 26-2, p. 117, fn. omitted.)

By focusing on analogies to guaranties, the Court of Appeal also overlooked that the parties in this case specifically intended the standby letters of credit to be additional security. FN8 The parties' stipulated facts include that the original loan agreement was secured by a letter of credit, and that "Vista caused [the subsequent letters of credit] to be issued by Western as additional collateral security ...." The Court of Appeal found the letters of credit were not security interests in personal property under California Uniform Commercial Code section 9501, subdivision (4), as the Bank had argued. However, we need not determine whether a standby letter of credit comes within the scope of division 9 of the California Uniform Commercial Code. A letter of credit is sui generis as a means of securing or supporting performance of an obligation incurred in a separate transaction. Regardless of whether this idiosyncratic undertaking meets the qualifications for a security interest under the California Uniform Commercial Code, it nevertheless is a form of security for assuring another's performance.

FN8 To the extent that resort to analogy is appropriate for such a singular legal creation as the standby letter of credit, its closest relative would seem to be cash collateral. As one commentator noted: "In view of the relative positions of the beneficiary, the [customer], and the issuing bank, the standby letter of credit is more analogous to a cash deposit left with the beneficiary than it is to the traditional letter of credit or to the performance bond. Because the beneficiary generates all the documents necessary to obtain payment, he has the power to appropriate the funds represented by the standby letter of credit at any time.... [¶] Even though the standby letter of credit is functionally equivalent to a cash deposit, it differs from a cash deposit because the customer does not have to part with its own funds until payment is made and it is forced to reimburse the issuing bank. Because the cash-flow burden might otherwise be prohibitive, this is a great advantage to a party who enters into a large number of transactions simultaneously. Moreover, the beneficiary is satisfied; while it does not actually possess the funds, as it would if a cash deposit were used, it is protected by the credit of a financial institution." (Comment, *The Independence Rule in Standby Letters of Credit* (1985) 52 U. Chi. L.Rev. 218, 225-226, fns. omitted; see Dolan, Letters of Credit, *supra*, § 1.06, pp. 1-24 to 1-25, for a discussion of cases illustrating use of standby credits in lieu of cash, bonds, and other security.)

When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory ***252** prohibition of deficiency judgments. Code of Civil Procedure section 580d does not limit the security for notes given for the purchase of real property only to trust deeds; other security may be given as well. (*Freedland v. Greco* (1955) 45 Cal.2d 462,

466 [289 P.2d 463].) Creditors may resort to such other security in addition to nonjudicial foreclosure of the real property security. (*Ibid.*; *Hatch v. Security-First Nat. Bank* (1942) 19 Cal.2d 254, 260 [120 P.2d 869].) (6) A standby letter of credit is a security device created at the request of the customer/debtor that is an obligation owed independently by the issuing bank to the beneficiary/creditor. (See *San Diego Gas & Electric Co. v. Bank Leumi, supra*, 42 Cal.App.4th at pp. 933-934; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank, supra*, 86 Cal.App.3d at p. 178.) A creditor that draws on a letter of credit does no more than call on all the security pledged for the debt. When it does so, it does not violate the prohibition of deficiency judgments.

(1c) The Legislature plainly intended that the sections of Senate Bill No. 1612 we have addressed would apply to existing loan transactions supported by outstanding letters of credit. We conclude the Legislature's action did not effect a change in the law. Before the Legislature passed Senate Bill No. 1612, an issuer could not refuse to honor a conforming draw on a standby letter of credit-given as additional security for a real property loan-on the basis that the draw followed a nonjudicial sale of the real property security. The Court of Appeal created such a basis, but produced an unprecedented rule without solid legal underpinnings or any real connection to the actual language of the statutes involved.

Therefore, the aspects of Senate Bill No. 1612 we have discussed did not effect any change in the law, but simply clarified and confirmed the state of the law prior to the Court of Appeal's first opinion. Because the legislative action did not change the legal effect of past actions, Senate Bill No. 1612 does not act retrospectively; it governs this case. The Legislature concluded that Senate Bill No. 1612 should be given immediate effect to confirm and clarify the law applicable to loans secured by real property and supported by letters of credit. This conclusion was reasonable, particularly in view of the uncertainties the financial community evidently faced after the Court of Appeal's decision. (See, e.g., Murray, What *Should I Do With This Letter of Credit?* (Cont.Ed.Bar 1994) 17 Real Prop. L. Rptr. 133, 138-140.)

In sum, the Court of Appeal erred in concluding the Legislature's enactment of Senate Bill No. 1612 had no effect on this case. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision and make certain the parties' obligations when letters of credit supported loans also secured by real property. The Legislature manifestly intended the ***253** respective obligations of the parties to a letter of credit transaction should remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Senate Bill No. 1612. Accordingly, we conclude the judgment of the Court of Appeal should be reversed. FN9

FN9 Western belatedly claims it should not be liable for prejudgment interest on the amount of the letter of credit it dishonored. It argues it should not be "punished" for seeking a declaration of its rights in a novel and complex case. The Court of Appeal decided that "if it is ultimately determined that Western is liable to the Bank on the letters of credit then it must follow that it is liable for legal interest thereon from and after the day when its obligation to pay on the letters arose. (Civ. Code, § 3287, subd. (a).)" Western did not petition for review of this aspect of the Court of Appeal decision. In any event, Western's liability for prejudgment interest is clear. The award of this interest is not imposed for the sake of punishment. The award depends only on whether Western knew or could compute the amount the Bank was entitled to recover on the letters of credit. (*Fireman's Fund Ins. Co. v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154, 1173 [286 Cal.Rptr. 146].) The Court of Appeal correctly assessed Western's liability for prejudgment

interest.

Disposition

The judgment of the Court of Appeal is reversed, and the cause remanded for further proceedings consistent with this opinion.

George, C. J., Baxter, J., and Brown, J., concurred.

WERDEGAR, J.,

Concurring and Dissenting.-I concur in the majority's conclusion that California Uniform Commercial Code section 5114, subdivision (2)(b), does not excuse Western Security Bank, N.A. (Western), the issuer, from honoring its letter of credit upon demand for payment by Beverly Hills Business Bank (the Bank), the beneficiary. I would not, however, reach this conclusion under the majority's reasoning that Senate Bill No. 1612 (Stats. 1994, ch. 611) merely declared existing law and that, prior to the bill's enactment, the antideficiency law had no effect on letters of credit. Instead, I agree with Justice Mosk that section 5114 simply does not bear the interpretation that the use of a letter of credit to support an obligation secured by a mortgage or deed of trust constitutes "fraud in the transaction." (Cal. U. Com. Code, § 5114, subd. (2); see conc. & dis. opn. of Mosk, J., *post*, at pp. 262-263.) Thus, Western was obliged to honor the Bank's demand for payment.

The conclusion that the Bank may properly draw upon the letter of credit does not compel the further conclusion that the antideficiency law ultimately offers no protection to Vista Place Asssociates. This is illustrated by a comparison of the majority opinion and the separate opinion of Justice Mosk, which agree on the former point but disagree on the latter. In my view, the Bank's petition for review of a decision rejecting its claim (as ***254** beneficiary) against Western (as issuer) under superseded law does not present an appropriate vehicle for broader pronouncements on the antideficiency law's effect on other claims and other parties. Because the Legislature in Senate Bill No. 1612 has articulated rules that will govern all future letters of credit, and because letters of credit typically expire after a finite period, the status of residual letters of credit issued before the bill's effective date will soon become an academic question. In contrast, whether the antideficiency law should as a general matter be expansively or narrowly construed remains of vital importance, as demonstrated by the interest in this case shown by amici curiae involved in the purchase and sale of real estate. Under these circumstances, the principle of judicial restraint counsels against the majority's sweeping declaration that the reach of the antideficiency law prior to Senate Bill No. 1612 was too narrow to affect the respective obligations of the parties to a letter of credit transaction.

Underlying the broad declaration just mentioned is the majority's erroneous conclusion that Senate Bill No. 1612 merely clarified existing law and, thus, may be applied to transactions entered into before the bill's operative date. Before that date, the antideficiency law did not distinguish between residential and nonresidential real estate transactions. Now, however, as amended by Senate Bill No. 1612, the antideficiency law does distinguish between residential and nonresidential real estate transactions. New Code of Civil Procedure section 580.7, which the bill added, makes a letter of credit unenforceable when issued to avoid the default of an existing loan and "[t]he existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer." (*Id.*, subd. (b)(3).)

In light of this provision, we may conclude that letters of credit before Senate Bill No. 1612 either were enforceable in the specified residential real estate transactions but now are not, or were not enforceable in all other real estate transactions but now are. This case does not require us to choose between these possibilities. Either way, Senate Bill No. 1612 went beyond mere clarification to change

the effective scope of the antideficiency law. To apply it retroactively would change the legal consequences of past acts. Under these circumstances, it is appropriate to apply the ordinary presumption that a legislative act operates prospectively, and inappropriate to apply to this case the new set of rules articulated in Senate Bill No. 1612.

MOSK, J.,

Concurring and Dissenting.-I agree with the majority that the issue before us is not whether Senate Bill No. 1612 (1993-1994 Reg. Sess.) (hereafter Senate Bill No. 1612) has retrospective application. It does not. ***255** Rather, we must determine what the law was *before* Senate Bill No. 1612 was enacted to provide, in effect, a "standby letter of credit exception" to the antideficiency statutes.

I disagree with the majority that Senate Bill No. 1612 did not change prior law. In my view, far from merely "clarifying" the "true" meaning of prior law-as the majority implausibly assert-its numerous amendments and additions to the statutes reversed what the Court of Appeal aptly referred to as "the fifty years of consistent solicitude which California courts have given to the foreclosed purchase money mortgagee." FN1

FN1 Among other things, Senate Bill No. 1612 amended Civil Code section 2787, added Code of Civil Procedure sections 580.5 and 580.7, and amended California Uniform Commercial Code former section 5114. (See Stats. 1994, ch. 611, §§ 1-6.) It appears, however, that our decision in this matter will have limited application. It will operate only when: (a) a lender obtained a standby letter of credit prior to September 15, 1994, the effective date of Senate Bill No. 1612, to support a transaction secured by a deed of trust against real property; (b) the creditor defaulted on the deed of trust; (c) the lender elected to foreclose on by way of trustee's sale rather than through judicial foreclosure; and (d) the lender thereafter demanded payment under the standby letter of credit. In view of the limited precedential value of this case, a better course would have been to dismiss review as improvidently granted.

As the majority concede, a legislative declaration of an existing statute's meaning is neither binding nor conclusive. "The Legislature has no authority to interpret a statute. That is a judicial task." (*Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8 [185 Cal.Rptr. 582]; see also *California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 213 [187 P.2d 702]; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935].) As the majority also concede, the legislative interpretation of prior law in this case is particularly unworthy of deference: Nothing in the previous legislative history of letter of credit statutes suggests an intent to create an exception to the antideficiency statutes. Indeed, it is apparently only recently that standby letters of credit have been used in real estate transactions.

Accordingly, unlike the majority, I conclude that before Senate Bill No. 1612, standby letters of credit were not exempt from the antideficiency statutes precluding creditors from obtaining a deficiency judgment from a creditor following nonjudicial foreclosure on a real property loan.

I.

As the Court of Appeal emphasized, before Senate Bill No. 1612, the potential conflict between the letters of credit statutes and the antideficiency statutes posed a question of first impression, arising from the relatively recent innovation of the use of standby letters of credit as additional security ***256** for real estate loans. Does the so-called "independence principle"-under which letters of credit stand separate and apart from the underlying transaction-constitute an exception to the antideficiency statutes that bar deficiency judgments after a nonjudicial foreclosure on real property?

The majority conclude that even before Senate

Bill No. 1612, there was no restriction on the right of a creditor to demand payment on a standby letter of credit after a nonjudicial foreclosure on real property. They are wrong.

Under the so-called "independence principle," the issuer of a standby letter of credit "must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary." (Cal. U. Com. Code, former § 5114, subd. (1), as amended by Stats. 1994, ch. 611, § 4.) In turn, the issuer of a standby letter of credit "is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit." (*Id.*, subd. (3).) FN2

FN2 As the reference to "goods or documents" in the statute suggests, the drafters appear to have contemplated use of letters of credit in commercial financial transactions, not as additional security in real estate transactions.

A standby letter of credit specifically operates as a means of guaranteeing payment in the event of a future default. "A letter of credit is an engagement by an issuer (usually a bank) to a beneficiary, made at the request of a customer, which binds the bank to honor drafts up to the amount of the credit upon the beneficiary's compliance with certain conditions specified in the letter of credit. The customer is ultimately liable to reimburse the bank. The traditional function of the letter of credit is to finance an underlying customer's beneficiary contract for the sale of goods, directing the bank to pay the beneficiary for shipment. A different function is served by the 'standby' letter of credit, which directs the bank to pay the beneficiary not for his own performance but upon the customer's default, thereby serving as a guarantee device." (Note, " *Fraud in the Transaction": Enjoining Letters of Credit During the Iranian Revolution* (1980) 93 Harv. L.Rev. 992, 992-993, fns. omitted.)

Thus, in practical effect, a standby letter of credit constitutes a promise to provide additional funds in the event of a future default or deficiency. As such, prior to passage of Senate Bill No. 1612, it potentially came up against the restrictions of the antideficiency statutes barring a creditor from obtaining additional funds from a debtor after a nonjudicial foreclosure. Indeed, as ***257** the parties concede, nothing in the applicable statutes or legislative history prior to the amendments and additions enacted by Senate Bill No. 1612 created any specific exception to the antideficiency statutes for standby letters of credit. Nor did anything in the applicable statutes or legislative history "imply" that the antideficiency statutes must yield to the so-called "independence principle," based on public policy or otherwise.

We have previously summarized the history and purpose of the antideficiency statutes as follows.

"Prior to 1933, a mortgagee of real property was required to exhaust his security before enforcing the debt or otherwise to waive all rights to his security [citations]. However, having resorted to the security, whether by judicial sale or private nonjudicial sale, the mortgagee could obtain a deficiency judgment against the mortgagor for the difference between the amount of the indebtedness and the amount realized from the sale. As a consequence during the great depression with its dearth of money and declining property values, a mortgagee was able to purchase the subject real property at the foreclosure sale at a depressed price far below its normal fair market value and thereafter to obtain a double recovery by holding the debtor for a large deficiency. [Citations.] In order to counteract this situation, California in 1933 enacted fair market value limitations applicable to both judicial foreclosure sales ([Code Civ. Proc.,] § 726) and private foreclosure sales ([*id.*,] § 580a) which limited the mortgagee's deficiency judgment after exhaustion of the security to the difference between the fair

[market] value of the property at the time of the sale (irrespective of the amount actually realized at the sale) and the outstanding debt for which the property was security. Therefore, if, due to the depressed economic conditions, the property serving as security was sold for less than the fair [market] value as determined under section 726 or section 580a, the mortgagee could not recover the amount of that difference in this action for a deficiency judgment. [Citation.]

"In certain situations, however, the Legislature deemed even this partial deficiency too oppressive. Accordingly, in 1933 it enacted section 580b [citation] which barred deficiency judgments altogether on purchase money mortgages. 'Section 580b places the risk of inadequate security on the purchase money mortgagee. A vendor is thus discouraged from overvaluing the security. Precarious land promotion schemes are discouraged, for the security value of the land gives purchasers a clue as to its true market value. [Citation.] If inadequacy of security results, not from overvaluing, but from a decline in property values during a general or local depression, section 580b prevents the aggravation of the downturn that would result if defaulting ***258** purchasers were burdened with large personal liability. Section 580b thus serves as a stabilizing factor in land sales.' [Citations.]

"Although both judicial foreclosure sales and private nonjudicial foreclosure sales provided for identical deficiency judgments in nonpurchase money situations subsequent to the 1933 enactment of the fair value limitations, one significant difference remained, namely property sold through judicial foreclosure was subject to the statutory right of redemption ([Code Civ. Proc.,] § 725a), while property sold by private foreclosure sale was not redeemable. By virtue of sections 725a and 701, the judgment debtor, his successor in interest or a junior lienor could redeem the property at any time during one year after the sale, frequently by tendering the sale price. The effect of this right of redemption was to remove any incentive on the part of the mortgagee to enter a low bid at the sale (since the property could be redeemed for that amount) and to encourage the making of a bid approximating the fair market value of the security. However, since real property purchased at a private foreclosure sale was not subject to redemption, the mortgagee by electing this remedy, could gain irredeemable title to the property by a bid substantially below the fair value and still collect a deficiency judgment for the difference between the fair value of the security and the outstanding indebtedness.

"In 1940 the Legislature placed the two remedies, judicial foreclosure sale and private nonjudicial foreclosure sale on a parity by enacting section 580d [citation]. Section 580d bars 'any deficiency judgment' following a private foreclosure sale. 'It seems clear ... that section 580d was enacted to put judicial enforcement on a parity with private enforcement. This result could be accomplished by giving the debtor a right to redeem after a sale under the power. The right to redeem, like proscription of a deficiency judgment, has the effect of making the security satisfy a realistic share of the debt. [Citation.] By choosing instead to bar a deficiency judgment after private sale, the Legislature achieved its purpose without denying the creditor his election of remedies. If the creditor wishes a deficiency judgment, his sale is subject to statutory redemption rights. If he wishes a sale resulting in nonredeemable title, he must forego the right to a deficiency judgment. In either case his debt is protected.' " (*Cornelison v. Kornbluth* (1975) 15 Cal.3d 590, 600-602 [125 Cal.Rptr. 557, 542 P.2d 981], fns. omitted.)

Over the several decades since their enactment, our courts have construed the antideficiency statutes liberally, rejecting attempts to circumvent the proscriptions against deficiency judgments after nonjudicial foreclosure. "It is well settled that the proscriptions of section 580d cannot be avoided through artifice ...." (***259***Rettner v. Shepherd* (1991) 231 Cal.App.3d 943, 952 [282 Cal.Rptr. 687]; accord, *Freedland v. Greco* (1955) 45 Cal.2d

462, 468 [289 P.2d 463] [In construing the antideficiency statutes, " 'that construction is favored which would defeat subterfuges, expediencies, or evasions employed to continue the mischief sought to be remedied by the statute, or ... to accomplish by indirection what the statute forbids.' "]; *Simon v. Superior Court* (1992) 4 Cal.App.4th 63, 78 [5 Cal.Rptr.2d 428].)

Nor can the antideficiency protections be waived by the borrower at the time the loan was made. (See Civ. Code, § 2953 [such waiver "shall be void and of no effect"]; *Valinda Builders, Inc. v. Bissner* (1964) 230 Cal.App.2d 106, 112 [40 Cal.Rptr. 735] [The debtor's waiver agreement was "contrary to public policy, void and ineffectual for any purpose."].)

In this regard, as the Court of Appeal observed, two decisions are of particular relevance here: *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40 [71 Cal.Rptr. 64] (hereafter *Gradsky*), and *Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508 [259 Cal.Rptr. 425] (hereafter *Commonwealth*).

In *Gradsky*, the Court of Appeal held that Code of Civil Procedure section 580d operated to preclude a lender from collecting the unpaid balance of a promissory note from the guarantor after a nonjudicial foreclosure on the real property securing the debt. It concluded that if the guarantor could successfully assert an action against the borrower for reimbursement, "the obvious result is to permit the recovery of a 'deficiency' judgment against the [borrower] following a nonjudicial sale of the security under a different label." (*Gradsky, supra*, 265 Cal.App.2d at pp. 45-46.) "The Legislature clearly intended to protect the [borrower] from personal liability following a nonjudicial sale of the security. No liability, direct or indirect, should be imposed upon the [borrower] following a nonjudicial sale of the security. To permit a guarantor to recover reimbursement from the debtor would permit circumvention of the legislative purpose in enacting section 580d." (*Id.* at p. 46.)

In *Commonwealth*, borrowers purchased real property with a loan secured by promissory notes provided by a bank. At the bank's request, they obtained policies of mortgage guarantee insurance to secure payment on the promissory notes. They also signed indemnity agreements promising to reimburse the mortgage insurer for any funds it paid out under the policy. When the borrowers defaulted on the promissory notes, the bank foreclosed nonjudicially on the real property. It then collected on the mortgage insurance; the mortgage insurer then brought an action for reimbursement on the indemnity agreements. ***260**

The Court of Appeal in *Commonwealth* held that reimbursement was barred by Code of Civil Procedure section 580d. It rejected the argument that the indemnity agreements constituted separate and independent obligations: "The instant indemnity agreements add nothing to the liability [the borrowers] already incurred as principal obligors on the notes .... To splinter the transaction and view the indemnity agreements as separate and independent obligations ... is to thwart the purpose of section 580d by a subterfuge [citation], a result we cannot permit." (*Commonwealth, supra*, 211 Cal.App.3d at p. 517.)

The majority's attempt to distinguish *Gradsky* and *Commonwealth*, by characterizing them as grounded in subrogation law, is unpersuasive. Indeed, in *Commonwealth*, subrogation law was not directly in issue; the indemnity obligation provided a contract upon which to base collection. FN3

FN3 In any event, the analogy between standby letters of credit and guarantees is not as "forced" as the majority would suggest. As one commentator recently observed, "upon closer analysis, the borders between standby credits and contracts of guarantee are not so well settled as they may first appear." (McLaughlin, *Standby Letters of Credit and Guaranties: An Exercise in Cartography* (1993) 34 Wm. & Mary L.Rev. 1139, 1140; see also Alces,

> *An Essay on Independence, Interdependence, and the Suretyship Principle* (1993) 1993 U. Ill. L.Rev. 447 [rejecting distinction between letters of credit and "secondary obligations," i.e., guarantees and sureties].) Moreover, "courts have long recognized that, in a sense, issuers of credits 'must be regarded as sureties.' [Citation.] A seller of goods often insists on a commercial letter of credit because he is unsure of the buyer's ability to pay. The standby letter of credit arises out of situations in which the beneficiary wants to guard against the applicant's nonperformance. In both instances, the credit serves in the nature of a guaranty." Dolan, The Law of Letters of Credit: Commercial and Standby Credits (2d ed. 1991) § 2.10[1], pp. 2-61 to 2-62.)

The majority miss the point. As the Court of Appeal in this matter explained: " *Gradsky* and *Commonwealth* reflect the strong judicial concern about the efforts of secured real property lenders to circumvent section 580d by the use of financial transactions between debtors and third parties which involve post-nonjudicial foreclosure debt obligations for the borrowers. Their common and primary focus is on the lender's requirement that the debtor make arrangements with a third party to pay a portion or all of the mortgage debt remaining after a foreclosure, i.e., to pay the debtor's deficiency."

The Legislature, in enacting Senate Bill No. 1612, expressly abrogated the Court of Appeal decision in this matter and gave primacy to the so-called "independence principle" as against the antideficiency protections. Its additions and amendments to the statutes-lobbied for, and drafted by, the California Bankers Association-significantly altered prior law. Senate Bill No. 1612, therefore, should have prospective application only. ***261**

In their strained attempt to reach the conclusion that Senate Bill No. 1612 governs this case, the majority adopt the fiction that a standby letter of credit is an "idiosyncratic" form of "security" or the "functional equivalent" of cash collateral. They offer no sound support for such an approach. There is none. FN4

> FN4 The principal "authority" cited by the majority for the proposition that standby letters of credit are the "functional equivalent" of cash collateral is a student law review note published over a decade ago-and apparently never cited in any case in California or elsewhere. (Comment, *The Independence Rule in Standby Letters of Credit* (1985) 52 U. Chi. L.Rev. 218.) Significantly, the note nowhere discusses the use of standby letters of credit in transactions involving purchase money mortgages or the potential conflict between the so-called "independence principle" and antideficiency statutes. Indeed, it assumes that "[t]hose who engage in standby letter of credit transactions are usually large corporate or governmental entities with access to high-quality counsel and are thus in a position to evaluate and respond to the risks involved." (*Id.* at p. 238.) Needless to say, that is often *not* the case in real property transactions, particularly those involving residential property. As a leading commentator observed: "the motivation of the parties to a real estate secured transaction is frequently other than purely commercial, and their relative bargaining power is often grossly disproportionate." (Hetland & Hansen, *The "Mixed Collateral" Amendments to California's Commercial Code-Covert Repeal of California's Real Property Foreclosure and Antideficiency Provisions or Exercise in Futility?* (1987) 75 Cal.L.Rev. 185, 188, fn. omitted.)

As the Court of Appeal observed, from the perspective of the debtor, a standby letter of credit is not cash or its equivalent. It is, instead, a promise to

provide additional funds *in the event of future default or deficiency* and has the practical consequence of requiring the debtor to pay *additional* money on the debt *after* default or foreclosure. FN5 Moreover, unlike cash, which can be pledged as collateral security only once, a standby letter of credit does not require a debtor to part with its own funds until payment is made and thus permits a borrower to use standby letters of credit in a large number of transactions separately. Cash collateral, by contrast, does not impose personal liability on the borrower following a trustee's sale and does not encourage speculative lending practices.

FN5 Although it appears to be uncommon, an issuer of a standby letter of credit may demand security from its customer in the form of cash collateral or personal property as a condition for issuing the letter of credit. In the event of a draw on the letter of credit, the issuer would then have recourse to the pledged security, up to the value of the draw, without requiring its customer to pay additional money. Whether a real estate lender's draw on a standby letter of credit backed by security, and not by a mere promise to pay, would fall within the mixed security rule is a difficult question that need not be addressed here.

As the Court of Appeal observed: "For us to conclude that such use of a standby letter of credit is the same as an increased cash investment (whether or not from borrowed funds) is to deny reality and to invite the very overvaluation and potential aggravation of an economic downturn which the antideficiency legislation was originally enacted to prevent." ***262**

II.

The Court of Appeal correctly concluded that, before Senate Bill No. 1612, there was no implied exception to the antideficiency statutes for letters of credit. It erred, however, in holding that Western Security Bank, N.A. (Western) could have refused to honor the letter of credit on the ground that the Beverly Hills Business Bank (Bank), in presenting the letters of credit after a nonjudicial foreclosure, worked an "implied" fraud on Vista Place Associates (Vista).

The Court of Appeal cited former California Uniform Commercial Code former section 5114, subdivision (2)(b), which provides that when there has been a notification from the customer of "fraud, forgery or other defect not apparent on the face of the documents," the issuer "may"-but is not obligated to-"honor the draft or demand for payment."(Cal. U. Com. Code, § 5114, subd. (2)(b) as amended by Stats. 1994, ch. 611, § 4.) FN6 The statute is inapplicable under the present facts.

FN6 An issuer's obligations and rights are now governed by California Uniform Commercial Code section 5108, enacted in 1996 as part of Senate Bill No. 1599. (Stats. 1996, ch. 176, § 7.) The same legislation repealed section 5114, relating to the issuer's duty to honor a draft or demand for payment, as part of the repeal of division 5, Letters of Credit. (Stats. 1996, ch. 176, § 6.)

Western, presented with a demand for payment on a letter of credit, was limited to determining whether the documents presented by the beneficiary complied with the letter of credit-a purely ministerial task of comparing the documents presented against the description of the documents in the letter of credit. If the documents comply on their face, the issuer must honor the draw, regardless of disputes concerning the underlying transaction. (*Lumbermans Acceptance Co. v. Security Pacific Nat. Bank* (1978) 86 Cal.App.3d 175, 178 [150 Cal.Rptr. 69]; Cal. U. Com. Code, former § 5109, subd. (2) as added by Stats. 1963, ch. 819, § 1, p. 1934.) Thus, in this case, Western was not entitled to look beyond the documents presented by the Bank and refuse to honor the standby letter of credit based on a potential violation of the antideficiency statutes in the underlying transaction.

In my view, the concurring and dissenting opinion by Justice Kitching in the Court of Appeal correctly reconciled the policies behind standby letter of credit law and the antideficiency provisions of Code of Civil Procedure section 580d, as they existed *before* Senate Bill No. 1612. Thus, I would conclude that Western was obligated, under the so-called "independence principle," to honor the standby letter of credit presented by the Bank. None of the limited exceptions to that rule applied. Western was not, however, without recourse. It was entitled to seek reimbursement from Vista, pursuant ***263** to former California Uniform Commercial Code former section 5114, subdivision (3) and its promissory notes. Vista, in turn, could seek disgorgement from the Bank, if it has not legally waived its protection under Code of Civil Procedure section 580d-an issue that is not before us and should be remanded to the trial court. As Justice Kitching's concurrence and dissent concluded, "[t]his procedure would retain certainty in the California letter of credit market while implementing the policies supporting section 580d."

Kennard, J., concurred. ***264**

Cal. 1997.
Western Security Bank v. Superior Court
15 Cal.4th 232, 933 P.2d 507, 62 Cal.Rptr.2d 243, 32 UCC Rep.Serv.2d 534, 97 Cal. Daily Op. Serv. 2554, 97 Daily Journal D.A.R. 4507

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Supreme Court of California
The PEOPLE, Plaintiff and Respondent,
v.
Cruz Alberto MENDOZA et al., Defendants and Appellants.

No. S067104.
July 31, 2000.
Rehearing Denied Sept. 13, 2000.[FN*]

FN* Mosk, J., Kennard, J., and Werdegar, J., dissented.

Defendants were convicted by separate juries in the Superior Court, Marin County, No. SC39946,William H. Stephens, J., of murder during a robbery or burglary. Defendants appealed. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, Chin, J., held that statute reducing the degree of the crime if defendant is convicted of a crime which is distinguished into degrees but the trier of fact does not find the degree of the crime was inapplicable, overruling *McDonald*, 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, and abrogating *Escobar*, 48 Cal.App.4th 999, 55 Cal.Rptr.2d 883, and *Dailey*, 47 Cal.App.4th 747, 55 Cal.Rptr.2d 171.

Affirmed.

Mosk, J., filed a dissenting opinion.

Kennard, J., filed a dissenting opinion in which Werdegar, J., concurred.

Werdegar, J., filed a dissenting opinion.

Opinion, 69 Cal.Rptr.2d 664, vacated.

West Headnotes

[1] Statutes 361 181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In general. Most Cited Cases

Statutes 361 184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and purpose of act. Most Cited Cases

The court's fundamental task in interpreting a statute is to ascertain the Legislature's intent so as to effectuate the law's purpose.

[2] Statutes 361 188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

The court begins its inquiry regarding legislative intent by examining the statute's words, giving them a plain and commonsense meaning.

[3] Statutes 361 205

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k205 k. In general. Most Cited Cases

The court does not consider statutory language in isolation; rather, it looks to the entire substance of the statute in order to determine the scope and purpose of the provision.

[4] Statutes 361 208

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k208 k. Context and related clauses. Most Cited Cases

The court must harmonize the various parts of a statutory enactment by considering the particular clause or section in the context of the statutory framework as a whole.

[5] Statutes 361 181(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and consequences. Most Cited Cases

Statutes 361 212.3

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.3 k. Unjust, absurd, or unreasonable consequences. Most Cited Cases

The court must avoid a statutory construction that would produce absurd consequences, which the court presumes the Legislature did not intend.

[6] Homicide 203 1553

203 Homicide
203XIII Verdict
203k1552 Specification of Grade or Degree of Offense
203k1553 k. Necessity in general. Most Cited Cases
(Formerly 203k313(1))

Where the trial court correctly instructs the jury only on first degree felony murder and to find the defendant either not guilty or guilty of first degree murder, then as a matter of law the only crime of which the defendant may be convicted is first degree murder, and the question of degree is not before the jury, so that defendant is not "convicted of a crime which is distinguished into degrees," within meaning of statute providing that a defendant is deemed to have been convicted of the lesser degree if the defendant is convicted of a crime which is distinguished into degrees but the trier of fact did not find the degree of the crime; overruling *People v. McDonald*, 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, and abrogating *People v. Escobar*, 48 Cal.App.4th 999, 55 Cal.Rptr.2d 883, and *People v. Dailey*, 47 Cal.App.4th 747, 55 Cal.Rptr.2d 171. West's Ann.Cal.Penal Code §§ 189, 1157.

[7] Homicide 203 576

203 Homicide
203III Homicide in Commission of or with Intent to Commit Other Unlawful Act
203III(A) In General
203k576 k. Constitutional and statutory provisions. Most Cited Cases
(Formerly 203k18(1))

The first degree felony-murder rule is a creature of statute. West's Ann.Cal.Penal Code § 189.

[8] Homicide 203 580

203 Homicide
203III Homicide in Commission of or with Intent to Commit Other Unlawful Act
203III(B) Murder
203k580 k. In general. Most Cited Cases
(Formerly 203k22(1))

When the prosecution establishes that a defendant killed while committing one of the felonies listed in the felony-murder statute, by operation of statute the killing is deemed to be first degree murder as a matter of law, and there are no other degrees of such a murder. West's Ann.Cal.Penal Code §§ 189, 1157.

[9] Homicide 203 585

203 Homicide
203III Homicide in Commission of or with Intent

to Commit Other Unlawful Act
203III(B) Murder
203k582 Predicate Offenses or Conduct
203k585 k. Felonies in general. Most Cited Cases
(Formerly 203k307(4))

Homicide 203 1333

203 Homicide
203XI Questions of Law or Fact
203k1333 k. Grade, degree, or classification of offense. Most Cited Cases
(Formerly 203k307(4))

Where the evidence points indisputably to a killing committed in the perpetration of one of the felonies listed in the felony-murder statute, the only guilty verdict a jury may return is first degree murder, and thus, a trial court is justified in withdrawing the question of degree of murder from the jury and instructing it that the defendant is either not guilty, or is guilty of first degree murder. West's Ann.Cal.Penal Code §§ 189, 1157.

[10] Homicide 203 1376

203 Homicide
203XII Instructions
203XII(B) Sufficiency
203k1374 Grade, Degree or Classification of Offense
203k1376 k. Characterization or definition of degree in general. Most Cited Cases
(Formerly 203k307(3))

Homicide 203 1456

203 Homicide
203XII Instructions
203XII(C) Necessity of Instruction on Other Grade, Degree, or Classification of Offense
203k1456 k. Degree or classification of homicide. Most Cited Cases
(Formerly 203k307(3))

The trial court need not instruct the jury on offenses other than first degree felony murder or on the differences between the degrees of murder, where the evidence points indisputably to a killing committed in the perpetration of one of the felonies listed in the felony-murder statute, because the only guilty verdict a jury may return is first degree murder. West's Ann.Cal.Penal Code §§ 189, 1157; CALJIC 8.70.

[11] Jury 230 34(1)

230 Jury
230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k34 Restriction or Invasion of Functions of Jury
230k34(1) k. In general. Most Cited Cases
(Formerly 203k307(3))

Where the evidence established as a matter of law that the felony-murder during a robbery or burglary was of the first degree, the failure to instruct the jury on offenses other than first degree felony-murder or on the differences between the degrees of murder did not violate either the right to have a jury determine questions of fact or the constitutional right to have a jury determine every material issue the evidence presents. West's Ann.Cal.Penal Code §§ 189, 1126, 1157.

[12] Criminal Law 110 887

110 Criminal Law
110XX Trial
110XX(K) Verdict
110k887 k. Disregard of instructions. Most Cited Cases

If the trial court correctly instructs the jury only on first degree felony-murder and to find the defendant either not guilty or guilty of first degree murder, but the jury returns a verdict for a crime other than first degree murder, the trial court must refuse to accept the verdict because it is contrary to law, and must direct the jury to reconsider. West's Ann.Cal.Penal Code §§ 189, 1157.

[13] Statutes 361 217.3

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.3 k. Legislative hearings, re-

ports, etc. Most Cited Cases

Where a statute proposed by the California Code Commission for inclusion in the Penal Code of 1872 was enacted by the Legislature without substantial change, the report of the commission is entitled to great weight in construing the statute and in determining the intent of the Legislature.

[14] Criminal Law 110 883

110 Criminal Law
110XX Trial
110XX(K) Verdict
110k883 k. Specification of offense or grade or degree thereof. Most Cited Cases

Purpose of statute providing that a defendant is deemed to have been convicted of the lesser degree if the defendant is convicted of a crime which is distinguished into degrees but the trier of fact did not find the degree of the crime is to ensure that where a verdict other than first degree is permissible, the jury's determination of degree is clear. West's Ann.Cal.Penal Code § 1157.

[15] Courts 106 107

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k107 k. Operation and effect in general. Most Cited Cases

A decision is not authority for everything said in the opinion but only for the points actually involved and actually decided.

[16] Courts 106 91(.5)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k91 Decisions of Higher Court or Court of Last Resort
106k91(.5) k. In general. Most Cited Cases

Courts 106 107

106 Courts
106II Establishment, Organization, and Procedure
106II(K) Opinions
106k107 k. Operation and effect in general. Most Cited Cases

Only the ratio decidendi of an appellate opinion has precedential effect.

[17] Courts 106 92

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k92 k. Dicta. Most Cited Cases

The Supreme Court must view with caution seemingly categorical directives not essential to earlier decisions and be guided by dictum only to the extent it remains analytically persuasive.

[18] Statutes 361 212.5

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.5 k. Intention to change law. Most Cited Cases

As a general rule, in construing statutes, the court presumes the Legislature intends to change the meaning of a law when it alters the statutory language, as for example when it deletes express provisions of the prior version.

[19] Statutes 361 212.5

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.5 k. Intention to change law. Most Cited Cases

The repeal of a prior statute, together with enactment of a new law on the same subject with an important limitation deleted, strongly suggests that the Legislature intended to change the law.

[20] Homicide 203 1553

203 Homicide
203XIII Verdict
203k1552 Specification of Grade or Degree of Offense
203k1553 k. Necessity in general. Most Cited Cases
(Formerly 203k313(1))

The Legislature's repeal of statute imposing a duty on the jury to make a degree finding in every case in which "any person" was "indicted for murder," and enactment of a new statute on the same subject, providing that a jury finding of degree is required only if a defendant is convicted of a crime which is distinguished into degrees, strongly suggested the legislature intended to change the law, and the inference of legislative intent to change the law was particularly compelling because the legislature knew that the omitted phrases were significant to the Supreme Court's earlier decision in *Campbell.* West's Ann.Cal.Penal Code § 1157.

[21] Courts 106 100(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) k. In general; retroactive or prospective operation. Most Cited Cases

Legislature did not acquiesce in Supreme Court's *McDonald* decision, which held that the jury's failure to specify the degree of murder in its verdict rendered the conviction second degree murder by operation of law, by remaining silent after the *McDonald* decision, and thus, the Supreme Court would revisit the *McDonald* decision's interpretation of the statute generally requiring the jury to determine the degree of the crime. West's Ann.Cal.Penal Code § 1157.

[22] Courts 106 100(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) k. In general; retroactive or prospective operation. Most Cited Cases

Legislature's consideration of, but failure to enact, statutory amendments that would have superseded the Supreme Court's *McDonald* decision, which held that the jury's failure to specify the degree of murder in its verdict rendered the conviction second degree murder by operation of law, did not indicate legislative acquiescence, and thus, the Supreme Court would revisit the *McDonald* decision's interpretation of the statute generally requiring the jury to determine the degree of the crime. West's Ann.Cal.Penal Code § 1157.

[23] Criminal Law 110 304(9)

110 Criminal Law
110XVII Evidence
110XVII(A) Judicial Notice
110k304 Judicial Notice
110k304(9) k. Public and private acts and proclamations. Most Cited Cases

Supreme Court would take judicial notice of legislative materials relating to unpassed bills which, if enacted, would have superseded the Supreme Court's *McDonald* holding that the jury's failure to specify the degree of murder in its verdict rendered the conviction second degree murder by operation of law, where the requests for judicial notice were unopposed and the materials were offered for purposes of construing the statute generally requiring the jury to determine the degree of the crime. West's Ann.Cal.Penal Code § 1157.

[24] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative construction. Most Cited Cases

Unpassed bills, as evidences of legislative intent, have little value.

[25] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative construction. Most Cited Cases

The Legislature's failure to enact a proposed statutory amendment may indicate many things other than approval of a statute's judicial construction, including the pressure of other business, political considerations, or a tendency to trust the courts to correct their own errors.

[26] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative construction. Most Cited Cases

The court can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law.

[27] Courts 106 89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

The court must construe the language of a judicial opinion with reference to the facts the case presents, and the positive authority of a decision is coextensive only with such facts.

[28] Courts 106 90(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(1) k. In general. Most Cited Cases

Because of the need for certainty, predictability, and stability in the law, the Supreme Court does not lightly overturn its prior opinions.

[29] Courts 106 90(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(1) k. In general. Most Cited Cases

The policy of stare decisis does not shield court-created error from correction, but is a flexible one that permits the court to reconsider, and ultimately to depart from, its own prior precedent in an appropriate case.

[30] Courts 106 89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

A key consideration in determining the role of stare decisis is whether the decision being reconsidered has become a basic part of a complex and comprehensive statutory scheme, or is simply a specific, narrow ruling that may be overruled without affecting such a statutory scheme.

[31] Courts 106 90(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents
106k90 Decisions of Same Court or Co-Ordinate Court
106k90(1) k. In general. Most Cited Cases

Stare decisis did not mandate continued adherence to the Supreme Court's *McDonald* decision, which held that the jury's failure to specify the degree of murder in its verdict rendered the conviction second degree murder by operation of law, where the decision set forth a narrow rule of limited applicability that had not become a basic part of any comprehensive statutory scheme. West's Ann.Cal.Penal Code § 1157.

[32] Criminal Law 110 100(1)

110 Criminal Law
110VIII Jurisdiction
110k100 Exercise of Jurisdiction in General
110k100(1) k. In general. Most Cited Cases

Defendants had no cognizable reliance interest in obtaining a verdict of second degree murder by the means set forth in the Supreme Court's *McDonald* decision, which held that the jury's failure to specify the degree of murder in its verdict rendered the conviction second degree murder by operation of law, and they could not claim that their defense against felony-murder charges would have been conducted differently absent *McDonald*, and thus, the Supreme Court's overruling of *McDonald* in the defendants' case could be applied to the defendants. West's Ann.Cal.Penal Code §§ 189, 1157.

[33] Constitutional Law 92 4641

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)4 Proceedings and Trial
92k4640 Verdict
92k4641 k. In general. Most Cited Cases
(Formerly 92k253(4))

Courts 106 100(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(H) Effect of Reversal or Overruling
106k100 In General
106k100(1) k. In general; retroactive or prospective operation. Most Cited Cases

Due process principles did not prevent the Supreme Court from applying, in defendants' appeal of their convictions for felony-murder, the Supreme Court's overruling of its *McDonald* decision, which had held that the jury's failure to specify the degree of murder in its verdict rendered the conviction second degree murder by operation of law, because the overruling of *McDonald* neither expanded criminal liability nor enhanced punishment for conduct previously committed. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Penal Code §§ 189, 1157.

*****435 *899 **269** William D. Farber, San Rafael, under appointment by the Supreme Court, for Defendant and Appellant Cruz Alberto Mendoza.

David McNeil Morse, San Francisco, under appointment by the Supreme Court, for Defendant and Appellant Raul Valle.

***900** Daniel E. Lungren and Bill Lockyer, Attorneys General, George Williamson, Chief Assistant Attorney General, Ronald A. Bass, Assistant Attorney General, Stan M. Helfman and John R. Vance, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

CHIN, J.

Under Penal Code section 1157,[FN1] "[w]henever a defendant is convicted of a crime ... which is distinguished into degrees," the trier of fact "must find the degree of the crime ... of which he is guilty. Upon the failure of the [trier of fact] to so determine, the degree of the crime ... of which the defendant is guilty, shall be deemed to be of the lesser degree." Here, we consider this section's applicability under the following circumstances: (1) the prosecution's only murder theory at trial is that the killing was committed during perpetration of robbery or burglary, which is first degree murder as a matter of law (§ 189); (2) the court properly instructs the jury to return either an acquittal or a conviction of first degree murder; and (3) the jury returns a conviction for murder, but its verdict fails to specify the murder's degree. We conclude that under these circumstances, section 1157 does not apply

because the defendant has not been "convicted of a crime ... which is distinguished into degrees" within ***436** the meaning of that section. Thus, the conviction is not "deemed to be of the lesser degree." (§ 1157.) We therefore affirm the Court of Appeal's judgment.

FN1. Unless otherwise indicated, all further statutory references are to the Penal Code.

FACTS

On September 22, 1992, the Marin County Grand Jury returned an indictment accusing defendants Cruz Alberto Mendoza and Raul Antonio Valle of, among other crimes, "[m]urder in violation of Section 187(A)," second degree robbery (§ 211), and burglary (§ 459). These charges arose out of the killing of Pastor Dan Elledge at The Lord's Church in Novato, California. As special circumstances for sentencing purposes, the indictment also alleged that defendants committed murder while they were engaged in committing robbery and burglary. (§ 190.2, subd. (a)(17).)

After the trial court granted defendants' motion for separate trials, the prosecution presented its evidence against defendants simultaneously to separate juries. As to both defendants, the prosecution's only murder theory was that Valle and Mendoza shot and killed Pastor Elledge while burglarizing and robbing The Lord's Church (as one in a series of church robberies). Under section 189, all murder committed "in the perpetration of" robbery or ***901** burglary "is murder of the first degree." After the close of evidence, the trials proceeded independently for purposes of jury instruction, closing arguments, and return of the verdicts.

A. Mendoza Proceedings

In his defense, Mendoza, who admitted committing other crimes with (and without) Valle, maintained he never entered The Lord's Church and did not participate in any of the crimes Valle committed there, including Pastor Elledge's killing. In connection with the charge for that killing, Mendoza did not contend the jury could convict him of a degree or form of criminal homicide other than first degree felony murder. Nor did he ask the trial court to instruct the jury on lesser included offenses; his counsel agreed that because the prosecution had presented only a first degree felony-murder case, instructions relating to specific intent for other forms of first degree murder were unnecessary. Thus, Mendoza's counsel expressly declined to request instructions on malice aforethought and premeditation and deliberation.****270** At other points during the discussion of the instructions, Mendoza's counsel expressed his understanding that the prosecution's only murder theory was first degree felony murder.

Consistent with these proceedings, the trial court instructed Mendoza's jury only on first degree felony murder as follows: "The defendant is accused in Count One of the indictment of having committed the crime of murder, a violation of Penal Code Section 187. [¶] Every person who unlawfully kills a human being during the commission or attempted commission of robbery or burglary is guilty of the crime of murder, in violation of Section 187 of the Penal Code. [¶] For clarification, that is one definition, that is not the only definition of murder, it's the only one that applies to the facts of this case. [¶] In order to prove such crime, each of the following elements must be proved: A human being was killed; the killing was unlawful; and the killing occurred during the commission or attempted commission of robbery or burglary. [¶] The unlawful killing of a human being, whether intentional, unintentional or accidental, which occurs during the commission or attempted commission of the crime of robbery or burglary, is murder of the first degree when the perpetrator had the specific intent to commit such crime. [¶] The specific intent to commit robbery or burglary and the commission or attempted commission of such crime must be proved beyond a reasonable doubt. [¶] If a human being is killed by a person engaged in the commission or attempted commission of the crimes of robbery or burglary, all persons who either personally committed the robbery or burglary,*****437** or who aided and abetted the robbery or burglary, are guilty of murder in the first degree, whether the killing is intentional, unintentional, or ***902** accidental. [¶] For purposes of determining whether a person is guilty of murder in the first degree, a defendant who does not form an intent to aid and abet a participant in a robbery or burglary before a murder has occurred is not guilty of murder in the first degree. [¶] Thus, if you have a reasonable doubt whether Defendant Mendoza was the actual killer, you may not convict him of murder in the first degree unless the prosecution proves beyond a reasonable doubt that he formed the intent to aid and abet in the robbery before the murder occurred. [¶] If you find the defendant in this case guilty of murder in the first degree, you must then determine if one or more of the

[alleged] special circumstances are true or not true."

The court also gave the following instruction: "In order to find the defendant guilty of the crime of murder, as charged in Count One, you must be satisfied beyond a reasonable doubt that, first, the crimes of robbery and burglary, charged in Counts Two and Three, were committed; and, second, the defendant aided and abetted such crimes; and, third, a co-principal in such crime committed the crimes of robbery or burglary as charged in Counts Two and Three; and, fourth, the crime of murder was a natural and probable consequence of the commission of the crimes of robbery or burglary as charged in Counts Two and Three."

In addition, in instructing on the "lesser crime[s]" of which the jury could convict Mendoza if it found him not guilty of the charged crimes, the court did not mention any form of criminal homicide other than first degree felony murder. Consistent with these instructions, the verdict forms the court submitted to the jury did not give the jury the option to convict defendant of second degree murder or any other form of criminal homicide.

During its closing argument to the jury, the prosecution reaffirmed its focus on only first degree felony murder, explaining: "In order to find the defendant guilty of the crime of murder as charged [in] this Count 1, you must be satisfied beyond a reasonable doubt, folks, of the following: [¶] The crimes of robbery or burglary ... were committed, that the defendant aided and abetted such crimes. I submit to you [he] not only aided and abetted but he actively participated as well in those crimes, a co-principal in such crime committed, the crimes of robbery or burglary as charged in Counts II or III with ... Valle, and the crime of murder was a natural and probable consequence of the commission of the crimes of robbery or burglary as charged in Count II and III." The ****271** prosecution further explained: "Murder has been defined for you.... In this case it is the killing which occurred during the commission ... or attempted commission of a robbery or burglary. It is a first degree murder where the unlawful killing of a human being whether intentional, unintentional or accidental occurs during the ***903** commission or an attempted commission of the crime of robbery or burglary. And that is murder in the first degree when the perpetrator had the specific intent to commit the crime of either the robbery or the burglary. [¶] So, if you folks find that Mr. Mendoza was perpetrating a burglary and Mr. Valle [was] perpetrating a burglary and/or a robbery and that Pastor Elledge was killed during the commission of those crimes, [then] he is guilty of first degree felony murder. And that is what the People submit to you the proof beyond a reasonable doubt shows in this case."

As a transition to discussing the special circumstances instructions, the prosecution then remarked: "Now, there's an instruction separate from the first degree murder which is the felony murder which we just discussed with the instruction." In summing up, the prosecution asserted that the evidence proved beyond a reasonable doubt that Mendoza was "guilty of first degree murder" in connection with Pastor *****438** Elledge's killing because he entered The Lord's Church "with the intent to perpetrate a robbery and a burglary of that church." The prosecution concluded by insisting that Mendoza was "legally responsible for the felony murder of Dan Elledge."

Mendoza's counsel began his closing argument by telling the jury: "Your job is to decide whether Alberto Mendoza is guilty of first degree murder at The Lord's Church on August 26th, 1992.... [¶] This case is not about whether Mr. Mendoza is guilty of the robberies in Cerritos, Fairfield, San Jose or San Rafael. He's admitted to you his guilt for those crimes. What it is about and the main decision you will have to make is whether he is guilty of the first degree murder that is charged in Novato at The Lord's Church." Defense counsel also stressed the prosecution's assertion that "[i]t's all or nothing," i.e., that the prosecution has "either proven to you that [Mendoza] was in there doing this crime with [Valle] beyond a reasonable doubt, or he's not guilty." In summing up, defense counsel argued: "So, has the District Attorney proven Alberto Mendoza guilty beyond a reasonable doubt of first degree murder? I say that he has not." Counsel concluded: "You should acquit Mr. Mendoza of first degree murder. He did not burglarize The Lord's Church. He did not rob Daniel Elledge. He did not kill Daniel Elledge. He is innocent of these crimes."

The jury found Mendoza "guilty of the offense charged in Count I, a felony, to wit, murder in violation of Section 187(a) of the Penal Code of the State of California." After the clerk read this verdict aloud, the court asked each juror to indicate " 'yes' or 'no' whether or not that was your vote on the charge of

murder 187 first degree." Each juror answered, "Yes." The clerk then announced the jury's true findings regarding the special circumstances, i.e., that Pastor Elledge's murder "was committed by the defendant Alberto ***904** Mendoza while [he] was engaged in the commission of the crime of robbery" and "in the commission of the crime of burglary in the second degree." As to the other charges arising from the events at The Lord's Church, the clerk also read the jury's guilty verdicts on burglary and second degree robbery. At the penalty phase of the trial, the jury found that Mendoza's penalty should be life in prison without possibility of parole, rather than death. The trial court subsequently entered a judgment against Mendoza for first degree murder and sentenced him in accordance with the jury's finding. The Court of Appeal affirmed the judgment.

B. Valle Proceedings

At trial, Valle conceded his guilt of all substantive charges but contested the special circumstances allegations. Thus, he *admitted* having committed first degree felony murder (as well as burglary and robbery) with Mendoza at The Lord's Church. However, he maintained Mendoza had fired the fatal gunshots. Based on this contention, Valle also argued that at the time of the murder, he lacked the mental state a mere ****272** participant must have for a true finding on the special circumstances allegations. In making this argument, he relied on evidence that at the time of the murder, he suffered from posttraumatic stress syndrome related to prior combat experiences in El Salvador.

Consistent with the prosecution's theory and Valle's defense, the trial court instructed Valle's jury only on first degree felony murder as follows: "The defendant is accused in Count One of the Indictment of having committed the crime of murder, a violation of Penal Code Section 187. [¶] Every person who unlawfully kills a human being during the commission or attempted commission of robbery or burglary, is guilty of the crime of murder, in violation of Section 187 of the Penal Code. [¶] In order to prove such crime, each of the following elements must be proved: First, a human being was killed; second, the killing was unlawful; and third, the *****439** killing occurred during the commission or attempted commission of robbery or burglary. [¶] The unlawful killing of a human being, whether intentional, unintentional or accidental, which occurs during the commission or attempted commission of the crime of robbery or burglary, is murder of the first degree when the perpetrator had the specific intent to commit such crime. [¶] The specific intent to commit robbery or burglary and the commission or attempted commission of such crime must be proved beyond a reasonable doubt. [¶] In order for an accused to be guilty of murder as an aider and abettor of a burglary, he must have formed the intent to encourage or facilitate the perpetrator prior to or at the time the perpetrator entered [T]he Lord's Church with the required specific intent. [¶] For an accused to be guilty of ... murder, as an aider and abettor to a robbery, he must have ***905** formed the intent to encourage or facilitate the robbery prior to or during the commission of the robbery. [¶] If a human being is killed by any one of several persons engaged in the commission or attempted commission of the crime of robbery or burglary, all persons who either directly or actively commit the act constituting such crimes, or with knowledge of the unlawful purpose of the perpetrator of the crimes, and with the intent or purpose of committing, encouraging or facilitating the commission of the offenses, aids, promotes, encourages or instigates by act or advice its commission, are guilty of murder of the first degree whether the killing is intentional, unintentional, or accidental. [¶] If you find the defendant in this case guilty of murder of the first degree, you must determine if one or more of the [alleged] special circumstances are true or not true." As in Mendoza's trial, the trial court's instructions on the "lesser crime[s]" of which the jury could convict Valle if it found him not guilty of the charged crimes did not mention either second degree murder or any other form of criminal homicide.

During closing argument, the prosecutor, after again reading to the jury the court's instruction on first degree murder, stated: "It is clear from any interpretation of the evidence in this case that the defendant is guilty of first degree murder under this felony murder theory. Clearly he entered [The Lord's Church] with the intent to commit theft, he admitted that to his own doctors." The prosecutor also reiterated that for the first degree felony-murder rule to apply, the killing "can be unintentional or accidental. Which, in relation to the discharge of the firearm by this defendant, we argue to you was not accidental.... But in any event, it's clear that he's guilty of the first degree murder...." Later, the prosecutor explained that he was "not asking you to find [Valle] guilty of any lesser included offenses." The prosecutor closed by asserting that Valle "is responsible as the actual killer, of first degree

murder of Dan Elledge, and that the special circumstances of committing that murder in the first degree during the commission of a burglary and robbery are true....” In his rebuttal, the prosecutor again asserted that he had proven beyond a reasonable doubt every element and issue of “the first degree murder on the felony murder theory.”

Defense counsel began her closing argument by explaining that she would not “spend any time telling you that ... the prosecution, has not proven their case with regard to the robberies, the burglaries, and even the felony murder.” Counsel then focused the jury's attention on the difference ****273** between first degree felony murder and the alleged special circumstances, explaining: “[W]hat I want to point out is that when you look at the special circumstances, at first it appears that the felony murder and the special circumstance are the same thing because you find first degree murder by the felony ***906** murder theory, or the felony murder rule, if you're involved in the commission of a felony in someone's eyes, even if it's accidental, it's first degree murder. [¶] And then you turn to the special circum*****440** stance....” She later explained that the special circumstance of committing murder while engaged in a robbery or burglary, which must be considered “ ‘[i]f you find Mr. Valle guilty of murder in the first degree,’ ” “looks a lot like the vehicle which just got you to first degree murder, which is the felony murder rule.” She later repeated that “robbery and then death resulting is recognized [under the law] by the felony murder rule. That's how you get to first degree murder....” In concluding, counsel asked the jury to find the special circumstances allegations not true, while she conceded that Valle was “guilty of ... the felony murder of Dan Elledge because he was in there when someone died. He was participating in a felony first degree murder robbery.”

After closing arguments, the court discussed the verdict forms with counsel. Defense counsel began by asserting that a proposed verdict form on the murder charge contained “a mistake” because it was “a verdict form for premeditated and deliberate murder under [section] 187(a)....” Counsel argued that the form “should read, ‘Murder, in violation of Section 189 ... in that the murder was committed while the defendant was engaged in the commission of a felony, to wit, robbery and/or burglary.’ And that would be felony murder under [section] 189.” In reply to the court's request that she explain this proposal, counsel replied: “Because ... that's the theory of the case, that's what we've talked about, that's what's been put on....” Counsel continued: “[M]y concern is with the felony murder language.... [¶] ... I think what it should say is ... that, ‘to wit, this murder was committed during the commission of a felony,’ that it's clear they're finding ... a murder based on felony murder.... [¶] There's been so much discussion about—I mean, and the whole theory is that the murder is found by the killing happening during the commission of a felony.... [¶] So I think it should be clear to [the jurors] at the time that they are—they are dealing with the verdict on murder or not that it's felony murder, and that's exactly what they're finding.”

The prosecution objected to defense counsel's proposal, asserting that a verdict form should never refer to “the theory” or “theories” of the murder. It also explained: “In this case, there is only one theory, so there can't be any confusion as to what [the jury's] finding is, it has to be in the commission of a felony.” Apparently agreeing with the prosecution, the court then denied defendant's request that the verdict form refer to the prosecution's legal theory. As in Mendoza's trial, the verdict forms the court submitted to Valle's jury did not give it the option to return a verdict for second degree murder or any lesser form of criminal homicide.

***907** The jury found Valle “guilty of the offense charged in Count I, a felony, to wit, murder in violation of Section 187(a)....” It also found him guilty of second degree robbery and burglary, and found true the special-circumstances allegations that he had committed the murder while committing robbery and burglary. After the clerk read these findings aloud, the court asked each juror: “With respect to the verdict of the jury in Count I, a violation of Section 187 ..., murder, the finding of guilty, was that your individual verdict ... ?” Each juror answered, “Yes.” At the penalty phase of the trial, the jury found that Valle's penalty should be life in prison without possibility of parole, rather than death. The trial court subsequently entered a judgment against Valle for first degree murder and sentenced him in accordance with the jury's finding. The Court of Appeal affirmed the judgment.

DISCUSSION

The issue here is the proper construction of section 1157, which the Legislature first enacted as part

of the Penal Code of 1872. As originally enacted, section 1157 provided: ****274** "Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of *****441** the crime of which he is guilty." In 1951, the Legislature amended this language to make the statute apply "[w]henever a defendant is convicted of a crime which is distinguished into degrees...." (Stats.1951, ch. 1674, § 109, p. 3849.) As relevant here, the statutory language has remained unchanged since.[FN2] Thus, the threshold question we must consider is whether, under the facts and circumstances we have set forth above, defendants were "convicted of a crime ... which is distinguished into degrees" within the meaning of section 1157. If they were not, then the statute does not apply.[FN3]

FN2. In 1978, the Legislature added language referencing attempts to commit crimes. (Stats.1978, ch. 1166, § 4, p. 3771.)

FN3. Justice Kennard errs in asserting that section 1157 applies "whenever a crime is 'distinguished into degrees.' " (Dis. opn. of Kennard, J., *post,* 98 Cal.Rptr.2d at p. 458, 4 P.3d at p. 289.) Since its 1951 amendment, the statute has applied by its terms only "[w]henever a defendant *is convicted of* a crime ... which is distinguished into degrees." (§ 1157, italics added.)

[1][2][3][4][5] Our fundamental task in making this determination is to ascertain the Legislature's intent so as to effectuate the law's purpose. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572, 88 Cal.Rptr.2d 19, 981 P.2d 944.) We begin our inquiry by examining the statute's words, giving them a plain and commonsense meaning. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476, 66 Cal.Rptr.2d 319, 940 P.2d 906.) In doing so, however, we do not consider the statutory language "in isolation." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.) Rather, we look to "the entire substance of the statute ... in order to determine the ***908** scope and purpose of the provision.... [Citation.]" (*West Pico Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal.3d 594, 608, 86 Cal.Rptr. 793, 469 P.2d 665.) That is, we construe the words in question " 'in context, keeping in mind the nature and obvious purpose of the statute....' [Citation.]" (*Ibid.*) We must harmonize "the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole." (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, 110 Cal.Rptr. 144, 514 P.2d 1224; see also *Woods v. Young* (1991) 53 Cal.3d 315, 323, 279 Cal.Rptr. 613, 807 P.2d 455; *Title Ins. & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 91, 255 Cal.Rptr. 670, 767 P.2d 1148; *Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend. (*People v. Jenkins* (1995) 10 Cal.4th 234, 246, 40 Cal.Rptr.2d 903, 893 P.2d 1224; *People v. Jeffers* (1987) 43 Cal.3d 984, 998–999, 239 Cal.Rptr. 886, 741 P.2d 1127; *In re Head* (1986) 42 Cal.3d 223, 232, 228 Cal.Rptr. 184, 721 P.2d 65.)

[6][7][8] Applying these principles, we conclude that defendants were not "convicted of a crime ... which is distinguished into degrees" within the plain and commonsense meaning of section 1157. We begin by considering the nature of felony murder. In California, the first degree felony-murder rule "is a creature of statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 463, 194 Cal.Rptr. 390, 668 P.2d 697 (*Dillon*).) When the prosecution establishes that a defendant killed while committing one of the felonies section 189 lists, "by operation of the statute the killing is deemed to be first degree murder as a matter of law." (*Dillon, supra,* 34 Cal.3d at p. 465, 194 Cal.Rptr. 390, 668 P.2d 697; see also *People v. Rogers* (1912) 163 Cal. 476, 483, 126 P. 143 [§ 189 "in terms makes ... a killing" committed during robbery "murder of the first degree"].) Thus, there are no degrees of such murders; as a matter of law, a conviction for a killing committed during a robbery or burglary can *only* be a conviction for first degree murder.

*****442** [9][10][11][12] That such murders can only be of the first degree has several significant consequences at trial. Where the evidence points indisputably to a killing committed in the perpetration of one of the felonies section 189 lists, the *only* guilty verdict a jury may return****275** is first degree murder. (*People v. Jeter* (1964) 60 Cal.2d 671, 675, 36 Cal.Rptr. 323, 388 P.2d 355; *People v. Lessard* (1962) 58 Cal.2d 447, 453, 25 Cal.Rptr. 78, 375 P.2d 46; *People v. Perkins* (1937) 8 Cal.2d 502, 516, 66 P.2d 631.) Under these circumstances, a trial court "is justified in withdrawing" the question of degree "from

the jury" and instructing it that the defendant is either not guilty, or is guilty of ***909** first degree murder. (*People v. Riser* (1956) 47 Cal.2d 566, 581, 305 P.2d 1.) The trial court also need not instruct the jury on offenses other than first degree felony murder or on the differences between the degrees of murder. (*People v. Rupp* (1953) 41 Cal.2d 371, 382, 260 P.2d 1; *People v. Bernard* (1946) 28 Cal.2d 207, 214, 169 P.2d 636.) Nor need it give CALJIC No. 8.70, which provides: "Murder is classified into two degrees. If you should find the defendant guilty of murder, you must determine and state in your verdict whether you find the murder to be of the first or second degree." [FN4] (*People v. Morris* (1991) 53 Cal.3d 152, 211, 279 Cal.Rptr. 720, 807 P.2d 949, disapproved on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1, 38 Cal.Rptr.2d 394, 889 P.2d 588.) Because the evidence establishes as a matter of law that the murder is of the first degree, these procedures violate neither the right under section 1126 to have a jury determine questions of fact (*People v. Sanford* (1949) 33 Cal.2d 590, 595, 203 P.2d 534) nor the constitutional right to have a jury determine every material issue the evidence presents. (See *People v. Thornton* (1974) 11 Cal.3d 738, 769, fn. 20, 114 Cal.Rptr. 467, 523 P.2d 267, disapproved on another ground in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12, 160 Cal.Rptr. 84, 603 P.2d 1.) Finally, if, under these circumstances, a jury returns a verdict for a crime other than first degree murder, the trial court must refuse to accept the verdict because it is contrary to law, and must direct the jury to reconsider. (Cf. *People v. Scott* (1960) 53 Cal.2d 558, 561–562, 2 Cal.Rptr. 274, 348 P.2d 882, disapproved on another ground in *People v. Morse* (1964) 60 Cal.2d 631, 648–649, 36 Cal.Rptr. 201, 388 P.2d 33.)

> FN4. Consistent with these principles, the Use Note to CALJIC No. 8.70 states in part: "If the only theory of murder supported by the evidence is first degree felony-murder, do not give this instruction." (Use Note to CALJIC No. 8.70 (6th ed.1996) p. 456.)

[13] The Legislature clearly was aware of many of these principles when it enacted section 1157 in 1872. In proposing the 1872 Penal Code to the Legislature, the California Code Commission explained in its note to section 189 that where a killing occurs during commission of one of the listed felonies, the question of degree "is answered by the statute itself, and the jury have [*sic*] no option but to find the prisoner guilty in the first degree. Hence, ... all difficulty as to the question of degree is removed by the statute." (Code commrs. note foll., Ann. Pen.Code, § 189 (1st ed. 1872, Haymond & Burch, commrs.-annotators) p. 83.) Where, as here, "a statute proposed by the California Code Commission for inclusion in the Penal Code of 1872 [was] enacted by the Legislature without substantial change, the report of the commission is entitled to great weight in construing the statute and in determining the intent of the Legislature. [Citation.]" (*People v. Wiley* (1976) 18 Cal.3d 162, 171, 133 Cal.Rptr. 135, 554 P.2d 881 (*Wiley*).)

***910** In light of these principles, we conclude that where, as here, the trial court correctly instructs the jury only on first degree felony murder and to find the defendant either not guilty or guilty of first degree murder, section 1157 does not apply. Under these circumstances, as a matter of law, the *only* crime of which a *****443** defendant may be convicted is first degree murder, and the question of degree is not before the jury. As to the degree of the crime, there is simply no determination for the jury to make. Thus, a defendant convicted under these circumstances has not, under the plain and commonsense meaning of section 1157, been "convicted of a crime ... which is distinguished into degrees." [FN5]

> FN5. We are not establishing a rule that depends only on "the theory or theories argued by the prosecution" (dis. opn. of Mosk, J., *post*, 98 Cal.Rptr.2d at p. 457, 4 P.3d at p. 288) or "the evidence presented by the prosecution." (Dis. opn. of Kennard, J., *post*, at p. 464, 4 P.3d at p. 295.) Rather, we hold that section 1157 does not apply where the *jury instructions* actually and correctly given do not permit the jury to consider or return a murder conviction other than of the first degree. Moreover, the cases before us do not, as Justice Kennard suggests, involve an attempt "to discover what the jury actually but unspokenly decided as to the degree of the crime charged" (Dis. opn. of Kennard, J., *post*, at p. 461) or "to divine what degree of crime the jury found." (*Id.*, at p. 461, 4 P.3d at p. 292.) Rather, as explained, they involve a situation where, under proper instructions, the jury had no degree decision to make.

[14] ****276** A contrary construction would violate several principles of statutory interpretation. First, it would ignore the obvious purpose of the statute, which is to ensure that where a verdict *other than first degree is permissible,* the jury's determination of degree is clear. Applying section 1157 where jury instructions correctly permit only a first degree felony-murder conviction would do nothing to further this statutory purpose.[FN6]

> FN6. Nor would applying section 1157 under these circumstances further the statutory purposes the dissenters put forth. Where the trial court properly instructs the jury only on the elements of first degree murder and to convict only if it finds every one of those elements beyond a reasonable doubt, there is no "uncertainty" in the jury's verdict to "avoid." (Dis. opn. of Mosk, J., *post,* 98 Cal.Rptr.2d at p. 455, 4 P.3d at p. 287.) There also is no danger that a jury returning a conviction has not "found all the elements constituting the higher degree of the crime." (Dis. opn. of Kennard, J., *post,* at p. 459, 4 P.3d at p. 290; see also dis. opn. of Werdegar, J., *post,* at p. 465, 4 P.3d at p. 296.) Based on the evidence, the arguments, and its jury instructions, the trial court here promptly entered first degree murder judgments against defendants. Thus, applying section 1157 would not "promote ... administrative efficiency." (Dis. opn. of Mosk, J., *post,* at p. 455, 4 P.3d at p. 287.) All it would do under the circumstances here is produce second degree murder convictions even though the jury unquestionably found defendants guilty of first degree felony murder. Unlike Justice Mosk and Justice Kennard, we fail to see how this result would further a legislative intent to "promote justice " (dis. opn. of Mosk, J., *post,* at p. 455, 4 P.3d at p. 287) or "advance" justice. (Dis. opn. of Kennard, J., *post,* at p. 461, 4 P.3d at p. 292.) Justice Werdegar agrees that reducing Valle's conviction to second degree murder "is not a just result for this murderer." (Dis. opn. of Werdegar, J., *post,* at p. 465, 4 P.3d at p. 296.)

Second, a contrary construction would place section 1157 in conflict (rather than in harmony) with the applicable principles regarding jury instructions and permissible verdicts where the evidence points indisputably to a killing committed while perpetrating a felony that section 189 lists, and ***911** would "do violence to the principle that the law does not require idle acts. (Civ.Code, § 3532.)" (*Webber v. Webber* (1948) 33 Cal.2d 153, 164, 199 P.2d 934; see also *People v. Sully* (1991) 53 Cal.3d 1195, 1240, 283 Cal.Rptr. 144, 812 P.2d 163 [refusing to interpret statute to "require idle acts"].) As we have explained, such murders are of the first degree as a matter of law, and where the trial court properly instructs the jury to find a defendant either not guilty or guilty of first degree murder, there is simply no degree determination for the jury to make.

Finally, a contrary construction would produce absurd and unjust results. As we noted at the outset, where section 1157 applies, "[u]pon the failure" of the fact finder to determine degree, "the degree of the crime ... of which the defendant is guilty, shall be deemed to be of the lesser degree." The Legislature added this provision to section 1157 in 1949 to change the *****444** judicially declared rule that a failure to determine degree entitled a defendant to a new trial. (*People v. Superior Court (Marks)* (1991) 1 Cal.4th 56, 73, 2 Cal.Rptr.2d 389, 820 P.2d 613 (*Marks II*); Stats.1949, ch. 800, § 1, p. 1537.) The result of applying it where, under correct instructions, a jury may convict a defendant *only* of first degree felony murder would be both absurd and unreasonable, for it would require courts to deem a conviction to be of a degree that was never at issue and that the jury was neither asked nor permitted to consider. For example, here, as defendant Valle concedes, it would "result[ ] in [his] being convicted of a lesser crime than the crime of which the evidence showed him to be guilty—in fact, a lesser crime than the crime of which his attorney at trial *conceded* he was guilty." This result would be "neither just nor fair" and would permit " 'form [to] triumph[ ] over substance.' " (*People v. Escobar* (1996) 48 Cal.App.4th 999, 1027, 55 Cal.Rptr.2d 883 (*Escobar*).) "[T]he law [would be] traduced." (*People v. Johns* (1983) 145 Cal.App.3d 281, 295, 193 Cal.Rptr. 182.) Because****277** "[w]e can think of no explanation why the Legislature could have desired" this absurd and unjust result, we reject a statutory construction that would produce it. (*People v. Broussard* (1993) 5 Cal.4th 1067, 1077, 22 Cal.Rptr.2d 278, 856 P.2d 1134 (*Broussard*) [construing Gov.Code, § 13967]; see also *People v. Dixon* (1979) 24 Cal.3d 43, 52, 154 Cal.Rptr. 236, 592 P.2d

752 [rejecting construction of § 1157 that would lead to "absurd results"]; *In re Haines* (1925) 195 Cal. 605, 613, 234 P. 883 ["[a]bsurd or unjust results will never be ascribed to the legislature"].) Thus, we conclude that when it amended section 1157 in 1951, the Legislature believed and intended that the statute would not apply where the only permissible conviction under proper jury instructions is first degree felony murder, because a defendant ***912** convicted under these circumstances has not been "convicted of a crime ... which is distinguished into degrees." [FN7]

> FN7. The principal basis for the statutory interpretation of Justice Mosk and Justice Kennard appears to be their view that it is neither absurd nor unjust to deem a murder conviction to be of the second degree despite proper jury instructions that permit only a first degree murder conviction and despite a defendant's concession that he committed first degree felony murder. (Dis. opn. of Mosk, J., *post*, 98 Cal.Rptr.2d at p. 455, 4 P.3d at p. 289; dis. opn. of Kennard, J., *post*, at p. 461, 4 P.3d at p. 292.) Otherwise, they could adopt our construction of section 1157 notwithstanding their belief that it is "contrary to" the statute's "plain language." (Dis. opn. of Mosk, J., *post*, at p. 457, 4 P.3d at p. 288; dis. opn. of Kennard, J., *post*, at p. 460, 4 P.3d at p. 291.) Writing for a unanimous court, Justice Mosk has stated that statutory language " ' "should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend." ' [Citations.]" (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 113, 145 Cal.Rptr. 674, 577 P.2d 1014.) Also writing for the court, Justice Kennard has stated that "the plain meaning of a statute should not be followed when to do so would lead to 'absurd results.' [Citations.]" (*Broussard*, *supra*, 5 Cal.4th at p. 1072, 22 Cal.Rptr.2d 278, 856 P.2d 1134.) "In such circumstances, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citations.]" (*Id.* at pp. 1071–1072, 22 Cal.Rptr.2d 278, 856 P.2d 1134.) Although we disagree with their view of section 1157's "plain language" (dis. opn. of Mosk, J., *post*, at p. 457, 4 P.3d at p. 295; dis. opn. of Kennard, J., *post*, at pp. 459, 464, 4 P.3d at pp. 290, 295), our conclusion is nevertheless consistent with *Younger* and *Broussard;* it conforms the letter of the statutory language to the statute's spirit and avoids the absurd consequence of deeming a murder conviction to be of the second degree when, under correct instructions, it could only have been of the first degree. The dissenters' interpretation, on the other hand, would produce this absurd consequence without, as we have explained, furthering the purposes they discuss.

In arguing for a contrary interpretation, defendants rely primarily on our decision in *People v. McDonald* (1984) 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709 (*McDonald*). There, the defendant stood trial on a murder charge, with a special circumstance allegation that he committed the murder while robbing or attempting to rob *****445** the victim. (*Id.* at p. 355, 208 Cal.Rptr. 236, 690 P.2d 709.) The jury returned a verdict finding the defendant " 'guilty of MURDER, in Violation of Section 187 Penal Code, a felony, as charged in Count I of the information.' " (*Id.* at p. 379, 208 Cal.Rptr. 236, 690 P.2d 709, italics omitted.) The jury also found the robbery special-circumstance allegation to be true. (*Id.* at p. 355, 208 Cal.Rptr. 236, 690 P.2d 709.) We reversed the conviction, holding that the trial court prejudicially erred in excluding expert testimony regarding psychological factors that may affect the accuracy of an eyewitness identification. (*Id.* at pp. 361–377, 208 Cal.Rptr. 236, 690 P.2d 709.)

We then turned to "address certain contentions dealing with the crimes for which defendant may be prosecuted on ... retrial." (*McDonald, supra*, 37 Cal.3d at p. 377, 208 Cal.Rptr. 236, 690 P.2d 709.) Among those contentions was the defendant's assertion that "the jury's failure to specify the degree of murder in its verdict render[ed] his conviction second degree murder by operation of law" under section 1157. (*McDonald, supra*, 37 Cal.3d at p. 379, 208 Cal.Rptr. 236, 690 P.2d 709.) We noted that this issue was "not likely to arise on retrial in this precise factual form," but discussed the issue because of possible double jeopardy implications, i.e., that retrial for a crime greater than second degree murder might be barred. (*Ibid.*)

***913** Responding to the defendant's contention under section 1157, the Attorney General argued in

part that "because the jury was instructed solely on first degree murder, any ****278** verdict of guilt on the murder charge could only be in the first degree. The jury was instructed that before it could return a verdict of guilt on the murder charge, it must unanimously agree on whether defendant was guilty of murder of the first degree. Thus, ... the jury's verdict of guilty of murder 'as charged' constituted an implied finding of first degree murder." (*McDonald, supra*, 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709.)

We rejected this argument, finding "no reason why this variation in the facts should lead to a different result." (*McDonald, supra*, 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709.) Quoting *People v. Campbell* (1870) 40 Cal. 129, 1870 WL 882 (*Campbell*), we first opined that "the terms of the statute are unambiguous. No special exception is created for the situation presented by this case; had the Legislature chosen to make section 1157 inapplicable to cases in which the jury was instructed on only one degree of a crime, it could easily have so provided. The statute requires that 'if the jury shall find the defendant guilty, the verdict shall specify the degree of murder.... It establishes a rule to which there is to be no exception, and the Courts have no authority to create an exception when the statute makes none.' [Citation.]" (*McDonald, supra*, 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709.)

We then stated that "prior [judicial] applications of the statute suggest no rationale for excepting this case from the plain language of section 1157." (*McDonald, supra*, 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709.) Again turning to *Campbell*, we continued: "[T]his court in *Campbell* was faced with a dilemma similar to that which [the Attorney General] asserts exists in the present case. In *Campbell*, the People claimed that because the facts alleged in the indictment would support only a conviction of first degree and not of second degree murder, the failure of the jury to specify the degree did not require reversal. The court rejected this contention, stating that 'We have no right to disregard a positive requirement of the statute, as it is not our province to make laws, but to expound them.' (40 Cal. at p. 138.) In interpreting the statutory provision which then required that the jury 'designate' (rather than the equivalent current term 'find') the degree of the crime, the court stated: 'The word "designate,"*****446** as here employed, does not imply that it will be sufficient for the jury to intimate or give some vague hint as to the degree of murder of which the defendant is found guilty; but it is equivalent to the words "express" or "declare," and it was evidently intended that the jury should expressly state the degree of murder in the verdict so that nothing should be left to implication on that point.... [T]he very letter of the statute ... requires the jury to "designate," or in other words, to express or declare by their verdict the degree of the crime. However absurd it may, at the first ***914** blush, appear to be to require the jury to designate the degree of the crime, when it appears on the face of the indictment that the offense charged has but one degree, there are plausible and, perhaps, very sound reasons for this requirement.... But whatever may have been the reasons for this enactment, it is sufficient for the Courts to know that the law is so written and it is their duty to enforce it.' (*Id.* at pp. 139–140.)" (*McDonald, supra*, 37 Cal.3d at p. 383, 208 Cal.Rptr. 236, 690 P.2d 709.) Based on *Campbell*, *McDonald* stated that the Attorney General's "attempt to distinguish the present case on th[e] basis [of the jury instructions] must therefore fail, and it must be deemed as a matter of law that defendant was convicted of second degree murder. [Citation.]" (*McDonald, supra*, 37 Cal.3d at p. 383, 208 Cal.Rptr. 236, 690 P.2d 709, fn. omitted.)

On reexamination, we conclude that we should not follow *McDonald* 's discussion of section 1157 under the circumstances in the present cases, and we overrule *McDonald, supra*, 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, to the extent it is inconsistent with this opinion. We first observe that *McDonald* 's discussion of section 1157 was not necessary to that case's resolution. As we have previously noted, although reversing the defendant's conviction because the trial court erroneously excluded expert testimony, *McDonald* went on to discuss the section 1157 issue because of *possible* "double jeopardy****279** considerations" on retrial. (*McDonald, supra*, 37 Cal.3d at p. 379, 208 Cal.Rptr. 236, 690 P.2d 709.) However, after stating that under section 1157, the murder conviction was deemed to be of the second degree, for three reasons we declined to consider whether double jeopardy principles barred retrial on first degree murder. "First, the question has not been raised by the parties, and its answer is not immediately obvious.... [¶] Second, the issue will not be presented on retrial unless the prosecution seeks a first degree murder conviction. But the prosecution's sole theory of first degree murder at trial was felony murder; given the jury's acquittal of defendant on the

robbery charge and thus its implied acquittal on attempted robbery, the prosecution may be hard put to prove an underlying felony. If the prosecution limits itself to a maximum charge of second degree murder on retrial, the double jeopardy issue will manifestly not arise. Finally, as a general rule, the burden is on the defendant to enter a plea of double jeopardy at the appropriate time and to present a basis for the plea." (*McDonald, supra*, 37 Cal.3d at pp. 383–384, fn. 31, 208 Cal.Rptr. 236, 690 P.2d 709.) Given the reversal of the conviction on another ground, the parties' failure to raise the double jeopardy issue, and the likelihood the issue would not arise on retrial, it was not necessary in *McDonald* to discuss section 1157's application. (See *Marks II, supra*, 1 Cal.4th at p. 65, fn. 6, 2 Cal.Rptr.2d 389, 820 P.2d 613["[a]part from concluding the trial court committed reversible error, no other determination of law was 'necessary to the decision,' " including double jeopardy issue that "would become ripe only if and when the prosecution attempt[s] to reprosecute for the higher degree offense and the defendant raise[s] the bar of once in jeopardy"].)

[15][16][17] ***915** A decision "is not authority for everything said in the ... opinion but only 'for the points actually involved and actually decided.' [Citations.]" *****447***(Santisas v. Goodin* (1998) 17 Cal.4th 599, 620, 71 Cal.Rptr.2d 830, 951 P.2d 399.) "[O]nly the ratio decidendi of an appellate opinion has precedential effect [citation]...." (*Trope v. Katz* (1995) 11 Cal.4th 274, 287, 45 Cal.Rptr.2d 241, 902 P.2d 259.) Thus, "we must view with caution seemingly categorical directives not essential to earlier decisions and be guided by this dictum only to the extent it remains analytically persuasive." (*Marks II, supra*, 1 Cal.4th at p. 66, 2 Cal.Rptr.2d 389, 820 P.2d 613.)

For several reasons, we do not find *McDonald* 's dictum analytically persuasive. Principally, in relying heavily on *Campbell* and quoting from it extensively, *McDonald* failed to consider that *Campbell* did not construe section 1157, but construed a *different* statute with *different* language. *Campbell* construed section 1157's predecessor, section 21 of the Act Concerning Crimes and Punishments (Act section 21). (*Campbell, supra*, 40 Cal. at pp. 137–138.) After defining murder in the first and second degrees, that section provided in relevant part: "[T]he jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict, whether it be murder of the first or second degree." (Stats.1856, ch. 139, § 2, p. 219.) As is readily apparent, Act section 21 did not contain the qualifying language of section 1157 we are now construing: "Whenever a defendant is convicted of a crime ... which is distinguished into degrees." Rather, *without qualification*, Act section 21 imposed a duty to make a degree finding on *every* jury hearing a case in which "any person" was "indicted for murder." (Stats.1856, ch. 139, § 2, p. 219.) Thus, *Campbell* "cannot be regarded as authority for proper construction of the quite different code section enacted in 1872." (*People v. Valentine* (1946) 28 Cal.2d 121, 144, 169 P.2d 1 (*Valentine*) [construing § 192].) Yet, in basing its discussion of section 1157 exclusively on *Campbell, McDonald* failed to consider, or even acknowledge, the difference in language between section 1157 and Act section 21. It also failed actually to examine section 1157's language or consider its plain and commonsense meaning.

[18][19][20] Indeed, the relevant legislative history suggests that the replacement of Act section 21 with section 1157 was a direct legislative response to *Campbell* 's reading of the prior statute. The Legislature enacted section 1157 in 1872, only two years after we ****280** decided *Campbell*. In doing so, it deleted the very language—"before whom any person indicted for murder shall be tried"—on which *Campbell* focused in concluding that Act section 21 required *all* juries, without exception, to designate the degree of a murder conviction. (See *Campbell, supra*, 40 Cal. at p. 138.) When it made this change, the Legislature clearly knew of *Campbell;* in proposing section 1157 ***916** to the Legislature, the California Code Commission included an explanatory note expressly referencing *Campbell*. (Code commrs., note foll., Ann. Pen.Code, § 1157, *supra*, at pp. 404–405; see also *Wiley, supra*, 18 Cal.3d 162 at p. 171, 133 Cal.Rptr. 135, 554 P.2d 881.) As a general rule, in construing statutes, "[w]e presume the Legislature intends to change the meaning of a law when it alters the statutory language [citation], as for example when it deletes express provisions of the prior version [citation]." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 461, 279 Cal.Rptr. 834, 807 P.2d 1063.) In *Valentine*, we applied this rule in the context of construing section 192, another section of the 1872 Penal Code, holding that "the repeal of" a prior statute, "together with enactment of a new law on the same subject with [an] important limitation deleted, strongly suggests that the Legislature intended" to change the law.

(*Valentine*, *supra*, 28 Cal.2d at p. 143, 169 P.2d 1.) Similarly, the Legislature's repeal of Act section 21, together with its enactment of a new statute on the same subject—section 1157—with significant differences in language, strongly suggests the Legislature intended to change the law. Indeed, here, because the Legislature knew of *Campbell* ' s statutory construction, and the omitted*****448** word or phrase "was significant to" that construction, the inference of altered intent "is particularly compelling." (*Dix*, *supra*, 53 Cal.3d at p. 462, 279 Cal.Rptr. 834, 807 P.2d 1063 [construing § 1170, subd. (d)]; see also *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659–661, 147 Cal.Rptr. 359, 580 P.2d 1155; *Oakland Pav. Co. v. Whittell Realty Co.* (1921) 185 Cal. 113, 120, 195 P. 1058 [deletion of language on which court based its statutory interpretation "is a clear indication of the legislative purpose" to change the law].) Thus, it appears that in substantially revising the relevant language when it enacted section 1157, the Legislature was responding to *Campbell* and intended to change the law. *McDonald*, which followed *Campbell* without recognizing the difference in the language of section 1157 and Act section 21, did not even consider this possibility.[FN8]

> FN8. We disagree with Justice Mosk's suggestion that as to section 1157, the legislative history of the 1872 statute "evinces the intent of the Commission for Revision of the Laws to 'preserv[e]' the 'spirit and substance' of existing law." (Dis. opn. of Mosk, J., *post*, 98 Cal.Rptr.2d at p. 456, 4 P.3d at p. 287.) In making this assertion, Justice Mosk partially quotes the preface to the 1872 Penal Code. However, as Justice Mosk elsewhere acknowledges (dis. opn. of Mosk, J., *post*, at pp. 455–456, fn. 1, 4 P.3d at p. 287, fn. 1), the partially quoted sentence actually states in full: " 'While *many* sections of existing laws have been redrawn *to correct verbal errors* and *to give them precision and clearness*, their spirit and substance have, in all cases, been preserved.' " (Code commrs., Preface, Ann. Pen.Code, *supra*, at p. vi., italics added.) By its terms, this sentence does not describe the fate under the new code of *all* existing sections, only of " 'many.' " (*Ibid.*) Indeed, only two sentences later, the Preface also states: " 'Many new sections have been introduced, but these were necessary to "supply the defects of and give completeness to the existing legislation of the State." ' " (*Ibid.*) The significant linguistic differences between section 1157 and Act section 21 indicate that section 1157 falls within this latter category of " 'new sections' " that " ' "supply the defects of and give completeness to the existing legislation of the State" ' "; section 1157 did not merely " 'correct verbal errors' " in or give " 'precision and clearness' " to Act section 21. (Code commrs., Preface, Ann. Pen.Code, *supra*, at p. vi.)

Moreover, because *McDonald* failed to acknowledge or consider the significant difference in statutory language, it also failed to recognize that ***917** the focus of *Campbell* 's analysis is not relevant to section 1157's construction. As noted, the jury's duty under Act section 21 to designate the degree of a murder conviction extended to "any person *indicted for* murder." (Stats. 1856, ch. 139, § 2, p. 219, italics added.) Accordingly, the Attorney General's argument and our statutory analysis in *Campbell* focused *exclusively* on the indictment. (*Campbell*, *supra*, 40 Cal. at pp. 137–141.) Given the language of Act section 21, we had no reason to consider, and our discussion did not mention, whether the ****281** trial court instructed the jury that the defendant could be convicted only of first degree felony murder. By contrast, such an instruction is very much relevant in determining whether a defendant has been "convicted of a crime ... which is distinguished into degrees" within the meaning of section 1157. In simply following *Campbell*, *McDonald* did not consider this distinction.

Nor did *McDonald* consider that the consequence under Act section 21 of a jury's failure to designate the crime's degree was significantly different from the consequence under section 1157. In *Campbell*, the jury's failure in this regard entitled the defendant to reversal of the judgment and a new trial. (*Campbell*, *supra*, 40 Cal. at p. 141.) By contrast, section 1157 specifies that upon a jury's failure to make the required determination, the crime's degree "shall be deemed to be of the lesser degree." As we have already explained, where, as here, the only legally permissible conviction under the jury instructions is first degree felony murder, application of this provision produces absurd and unjust results. By failing to consider this point, *McDonald* failed to *****449** recognize that the context in which Act section 21 operated was signif-

icantly different from that in which section 1157 operates. As we have also already explained, context is important in construing statutory language.[FN9]

> FN9. None of the authorities Justice Kennard cites support her assertion that we "must" interpret section 1157 as *Campbell* interpreted Act section 21. (Dis. opn. of Kennard, J., *post*, 98 Cal.Rptr.2d at p. 463, 4 P.3d at p. 294.) Section 5 states: "The provisions of this Code, *so far as they are substantially the same as existing statutes*, must be construed as continuations thereof, and not as new enactments." (Italics added.) It is inapplicable because, as we have explained, section 1157's language is not substantially the same as that of Act section 21. *People v. Ellis* (1928) 204 Cal. 39, 44, 266 P. 518 (*Ellis*) is inapplicable for the same reason; it expressly invoked the rule of statutory construction that applies where provisions are readopted " 'without change.' " (Cf. *People v. St. Martin* (1970) 1 Cal.3d 524, 535, 83 Cal.Rptr. 166, 463 P.2d 390 [refusing to apply "reenactment rule" where reenacted statute did not " 'use[ ] the same language' " as the prior one].) *Ellis* did not, as Justice Kennard suggests, "conclud[e]" that the 1872 Penal Code statute there at issue contained "significant changes in wording." (Dis. opn. of Kennard, J., *post*, at p. 463, 4 P.3d at p. 294.) *People v. Travers* (1887) 73 Cal. 580, 581, 15 P. 293 does not cite section 5 and states only that the construction of Act section 21 "may guide" section 1157's construction. Moreover, its discussion of *Campbell* was limited to a single descriptive sentence, which simply noted that *Campbell* "reversed [a] judgment because the verdict did not designate the degree of the crime." (*Travers, supra*, 73 Cal. at p. 582, 15 P. 293.) Also, *Travers* construed section 1157 before legislative amendments made it applicable only where the defendant is "convicted of a crime ... which is distinguished into degrees" and specified the consequence of a jury's failure to make a degree finding. Finally, *Travers* did not consider the question now before us.

***918** *McDonald* 's failure to consider these matters is not surprising, given the Attorney General's contentions in that case. The Attorney General in *McDonald* did not argue that because the jury instructions permitted a conviction only of first degree murder, the defendant was not "convicted of a crime ... which is distinguished into degrees" within the meaning of section 1157, the statute was inapplicable, and a degree determination was unnecessary. Rather, the Attorney General argued that in light of the jury instructions, "the jury's verdict of guilty of murder 'as charged' constituted an implied finding of first degree murder." (*McDonald, supra*, 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709.) Thus, the Attorney General in *McDonald* conceded the statute's applicability, but argued that its requirements had been satisfied under the circumstances.

Notably, in *People v. Bonillas* (1989) 48 Cal.3d 757, 257 Cal.Rptr. 895, 771 P.2d 844 (*Bonillas*), we cited similar considerations in refusing to deem *McDonald* binding on another question of section 1157's construction. *Bonillas* held that a jury made a sufficient degree finding under section 1157 where it initially returned a verdict silent as to degree but the next court day returned a supplemental verdict finding the defendant guilty of first degree murder. (*Bonillas, supra*, 48 Cal.3d at pp. 768–770, 257 Cal.Rptr. 895, 771 P.2d 844.) As authority for a contrary conclusion, the defendant in *Bonillas* cited *McDonald*, which refused to give effect to an express degree finding in a supplemental verdict the jury made more than three weeks after returning the original verdict. ****282**(*McDonald, supra*, 37 Cal.3d at pp. 379–382, 208 Cal.Rptr. 236, 690 P.2d 709.) In *Bonillas*, we did not follow *McDonald* 's analysis on this issue, explaining: "[T]he argument of the People in *McDonald* was not that the jury's completing its verdict was proper but that a jury 'finding' of first degree murder could be inferred.... [¶] Not only did the People in *McDonald* not argue that the court's attempt to have the jury complete its verdict was proper, it appears in *McDonald* the People conceded it was not. [Citation.] Thus, the propriety of the attempt to complete the verdict was not placed in issue in *McDonald*. It is true that in the portion of the opinion discussing *People v. Hughes* [(1959) 171 Cal.App.2d 362, 340 P.2d 679], there is *****450** some language in *McDonald* that appears to bear on the question, but that language failed to give recognition to the critical distinction between the situation in *McDonald* and the circumstances in *Hughes*. ..." (*Bonillas, supra*, 48 Cal.3d at pp. 775–776, 257 Cal.Rptr. 895, 771 P.2d 844.)

Similarly, as we have already explained, the Attorney General in *McDonald* did not argue that in light of the jury instructions, section 1157 was ***919** inapplicable because the defendant was not "convicted of a crime ... which is distinguished into degrees" within the meaning of section 1157. As we have also explained, *McDonald* 's discussion failed to recognize the "critical distinction" (*Bonillas, supra*, 48 Cal.3d at p. 776, 257 Cal.Rptr. 895, 771 P.2d 844) between the language of Act section 21 and section 1157. Thus, the analytical considerations we cited in *Bonillas* in finding *McDonald* 's discussion of section 1157 "not controlling" (*Bonillas, supra*, 48 Cal.3d at p. 775, 257 Cal.Rptr. 895, 771 P.2d 844) apply equally to *McDonald* 's discussion of the section 1157 issue now before us. *McDonald* 's failure to consider the matters we have discussed in following *Campbell* 's application of Act section 21 significantly undermines its discussion of section 1157. (See *Oakland Pav. Co. v. Whittell Realty Co., supra*, 185 Cal. at p. 119, 195 P. 1058 [refusing to follow opinions that "simply followed decisions rendered under previous statutes" without considering changes in statutory language].)

[21] We reject defendants' argument that we may not reconsider *McDonald* because the Legislature has acquiesced in that decision. " 'We are not here faced with a situation in which the Legislature has adopted an established judicial interpretation by repeated *reenactment* of a statute.' (Italics added.) [Citations.] The Legislature has neither reenacted nor amended nor rewritten any portion of [section 1157] since [we decided *McDonald*]. The lawmakers, in short, have simply not spoken on the subject during the intervening years." (*People v. Daniels* (1969) 71 Cal.2d 1119, 1128, 80 Cal.Rptr. 897, 459 P.2d 225 (*Daniels*).) "Thus, although the Legislature has not affirmatively disapproved [our] analysis in [*McDonald*], neither has it expressly or impliedly endorsed it. Accordingly, ... we are free to reexamine our earlier [decision]. [Citations.]" (*People v. Escobar* (1992) 3 Cal.4th 740, 751, 12 Cal.Rptr.2d 586, 837 P.2d 1100.) Indeed, as Justice Mosk wrote for the court in *Daniels*, "while the Legislature may thus choose to remain silent, we may not. It continues to be our duty to decide each case that comes before us; in so doing, we must apply every statute in the case according to our best understanding of the legislative intent; and in the absence of further guidance by the Legislature, we should not hesitate to reconsider our prior construction of that intent whenever such a course is dictated by the teachings of time and experience.... Respect for the role of the judiciary in our tripartite system of government demands no less." (*Daniels, supra*, 71 Cal.2d at p. 1128, 80 Cal.Rptr. 897, 459 P.2d 225.)

[22] In arguing to the contrary, defendants cite the Legislature's consideration, and rejection, of proposed amendments to section 1157. As introduced in March 1990, Senate Bill No. 2572 (1989–1990 Reg. Sess.) would have amended section 1157 to provide that when a jury fails to determine the crime's degree, instead of deeming the crime to be of the lesser degree, "the trial court or an appellate court may fix the degree ... if it is able to ***920** determine from other jury findings in the same case the degree the jury intended to fix. If this determination cannot be made, [on timely motion] the defendant ****283** shall be entitled ... to a hearing before a new jury to determine the degree...." (Sen. Bill No. 2572 (1989–1990 Reg. Sess.) § 1.) The Legislature later dropped the proposed amendment to section 1157 and ultimately passed a bill that amended section 1164 to specify "the degree of the crime" as one of the issues the trial court, before discharging the jury, must verify on the record the *****451** jury has determined. (Stats.1990, ch. 800, § 1, p. 3548.)

[23] In 1998 the Legislature again considered amending section 1157. As introduced, Assembly Bill No. 2402 (1997–1998 Reg. Sess.) would have made section 1157 "inapplicable whenever the crime [of which the defendant is convicted] is of the higher degree as a matter of law." (Assem. Bill No. 2402 (1997–1998 Reg. Sess.) § 1.) It also would have added two new subdivisions to section 1157, providing: (1) "The failure to make [a degree] finding shall not prevent the degree from being determined by admitted evidence, the charging instrument, jury instructions given, or other jury findings that were made. In the event the jury fails ... to record the degree ..., the court may, in its discretion, set the degree at the higher level where there is clear and reliable evidence to support such a determination. The court shall set forth on the record the facts and reasons for setting the degree at the higher level"; and (2) "If the degree cannot be determined, then the court, in its discretion, may either set the degree at the lower level or order a new trial, the sole issue of which shall be the determination of the degree." (Assem. Bill No. 2402 (1997–1998 Reg. Sess.) § 1.) An amended version of the bill provided: (1) section 1157 "shall only apply to the situation

where the finder of fact has a choice as to the degree"; and (2) "If the crime ... for which the defendant was convicted is a specified degree as a matter of law, upon the failure of the jury to determine the degree ..., the court may fix the degree as specified. In determining whether the degree of the offense is a specified degree as a matter of law, the court may refer to the descriptive substantive definitions contained in the charging document, any factual finding contained in the verdict form, the fact that the jury was only instructed on a specified degree and not any lesser degree, or the fact that the jury was only instructed on one theory of the case." (Assem. Amend. to Assem. Bill No. 2402 (1997–1998 Reg. Sess.) Apr. 29, 1998.) After another amendment in the Assembly, the bill was sent to the Senate, where it failed in committee. FN10

FN10. Defendants ask that we take judicial notice of legislative materials relating to Senate Bill No. 2572 (1989–1990 Reg. Sess.), and the Attorney General asks that we take judicial notice of similar materials relating to Assembly Bill No. 2402 (1997–1998 Reg. Sess.). We grant these unopposed requests.

[24][25][26] We do not agree with defendants that these failed attempts to amend section 1157 require us to follow *McDonald* 's discussion of ***921**section 1157. As Justice Mosk has written in a majority opinion for this court, " '[u]npassed bills, as evidences of legislative intent, have little value.' [Citations.]" (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 746, 38 Cal.Rptr.2d 650, 889 P.2d 970 (*Granberry*).) Contrary to defendants' assertion, the Legislature's failure to enact the amendments proposed in 1990 and 1998 "demonstrates nothing about what the Legislature intended" when it previously enacted section 1157 with the language we are now construing. (*Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 230, 216 Cal.Rptr. 688, 703 P.2d 27.) "At most it might arguably reflect" the Legislature's intent in 1990 and 1998. (*Ibid.*) But it provides very limited, if any, guidance even as to that intent, because the Legislature's failure to enact a proposed statutory amendment may indicate many things other than approval of a statute's judicial construction, including the pressure of other business, political considerations, or a tendency to trust the courts to correct its own errors. FN11 ****284** *****452**(*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 506, 87 Cal.Rptr.2d 702, 981 P.2d 543 (*Sierra Club*); *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 735, fn. 7, 180 Cal.Rptr. 496, 640 P.2d 115.) "We can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law." FN12 ***922**(*Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1349, 241 Cal.Rptr. 42, 743 P.2d 1299, fn. omitted.)

FN11. Regarding the 1998 legislation, the Attorney General cites a Senate committee report that (1) described the proposed amendment as "essentially codif[ying]" the Court of Appeal opinion in this case, (2) reported the view of the California Attorneys for Criminal Justice that the amendment was "unnecessary since the issue of what to do when the jury does not indicate degree is currently in front of the Supreme Court with the *Mendoza* case," and (3) concluded by asking whether the issue "is better resolved by the Supreme Court." (Sen. Com. on Public Safety, Rep. on Assem. Bill No. 2402 (1997–1998 Reg. Sess.) June 30, 1998, pp. 5–6.) The Attorney General finds it "clear" from this report and the proposal's failure in the Senate committee that "the [L]egislature is looking to this Court to correct its error" in *McDonald.* Although we do not adopt the Attorney General's conclusion, we agree that it is at least plausible.

FN12. The reliance of Justices Mosk and Kennard on these failed attempts to amend section 1157 (dis. opn. of Mosk, J., *post*, 98 Cal.Rptr.2d at pp. 456–457, 4 P.3d at pp. 287–288; dis. opn. of Kennard, J., *post*, at pp. 461–462, 4 P.3d at pp. 292–293) is inconsistent with the decisions we have cited, including Justice Mosk's majority opinion in *Granberry.* The cases Justice Mosk cites do not hold to the contrary. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 795, 38 Cal.Rptr.2d 699, 889 P.2d 1019, affirms that "only limited inferences can be drawn from" unpassed bills. Neither *People v. Ledesma* (1997) 16 Cal.4th 90, 65 Cal.Rptr.2d 610, 939 P.2d 1310, nor *People v. Bouzas* (1991) 53 Cal.3d 467, 279 Cal.Rptr. 847, 807 P.2d

1076, involved reliance on unpassed legislation. Rather, in both, we invoked the rule of statutory construction that applies where the Legislature reenacts a statute without changing its judicial construction. (*People v. Ledesma, supra*, 16 Cal.4th at pp. 100–101, 65 Cal.Rptr.2d 610, 939 P.2d 1310; *People v. Bouzas, supra*, 53 Cal.3d at p. 474, 279 Cal.Rptr. 847, 807 P.2d 1076.) As we have explained, citing Justice Mosk's majority opinion in *Daniels*, that rule does not apply here because the Legislature has not reenacted or amended section 1157 since we decided *McDonald*. For this reason, we disagree with Justice Werdegar's view that we must adhere to *McDonald* 's "illogic[al]" interpretation because the Legislature "has acquiesced to" it. (Dis. opn. of Werdegar, J., *post*, 98 Cal.Rptr.2d at p. 465, 4 P.3d at p. 296.)

That the Legislature in 1990 ultimately amended section 1164 rather than section 1157 does not require a different conclusion. Legislation adopting *McDonald*, either expressly or impliedly, would logically be placed in section 1157, the specific section at issue, not in section 1164. (Cf. *People v. King* (1993) 5 Cal.4th 59, 76, 19 Cal.Rptr.2d 233, 851 P.2d 27 (*King*) [construing § 12022.5].) Section 1164 contains no reference to *McDonald* 's discussion or even section 1157. Any connection between what is now section 1164 and *McDonald* is too oblique to signal an intent to codify *McDonald* 's discussion. (Cf. *King, supra*, 5 Cal.4th at p. 76, 19 Cal.Rptr.2d 233, 851 P.2d 27.)

[27] Nor does our treatment of *McDonald* in subsequent decisions require that we follow its discussion of section 1157 under the circumstances now before us. Recently, in finding *McDonald* 's discussion of section 1157 irrelevant to construction of another Penal Code section, we stated: "In distinguishing [this] decision[ ], we do not comment upon [its] reasoning or conclusions." (*People v. Paul* (1998) 18 Cal.4th 698, 710, fn. 10, 76 Cal.Rptr.2d 660, 958 P.2d 412.) And, as previously discussed, citing analytical considerations similar to those that exist here, we refused in *Bonillas* to follow *McDonald* 's analysis regarding the adequacy under section 1157 of degree findings in supplemental verdicts. (*Bonillas, supra*, 48 Cal.3d at pp. 774–776, 257 Cal.Rptr. 895, 771 P.2d 844.) Moreover, in *Bonillas*, supplemental verdict forms gave the jury the option of finding *either* first or second degree murder. (*Id.* at p. 768, 257 Cal.Rptr. 895, 771 P.2d 844.) Thus, unlike the present cases, *Bonillas* did not involve section 1157's application where the jury's *only* conviction option on a murder charge is first degree murder. As we have often said, we must construe the language of an opinion with reference to the facts the case presents, " 'and the positive authority of a decision is coextensive only with such facts.' [Citations.]"*****453 **285**(*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 734–735, 257 Cal.Rptr. 708, 771 P.2d 406.) [FN13]

FN13. In *People v. Cain* (1995) 10 Cal.4th 1, 53–57, 40 Cal.Rptr.2d 481, 892 P.2d 1224, under circumstances that appear to be similar to those now before us, we followed *Bonillas, supra*, 48 Cal.3d 757, 257 Cal.Rptr. 895, 771 P.2d 844, in finding that the trial court had properly reconvened the jury to make a degree finding. In doing so, we neither cited *McDonald, supra*, 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, nor considered the threshold question of whether section 1157 applies where the court instructs the jury only on first degree felony murder.

Defendant Valle asserts that we "unanimously reaffirmed" *McDonald* in *Marks II* and in our earlier decision in the same case, *People v. Marks* (1988) 45 Cal.3d 1335, 248 Cal.Rptr. 874, 756 P.2d 260 (*Marks I*). Valle is correct ***923** that those decisions cited *McDonald* in stating that despite the jury's true finding on a special circumstance allegation, under section 1157 defendant's conviction was for second degree murder because the jury failed to make a degree finding. (*Marks II, supra*, 1 Cal.4th at p. 73, 2 Cal.Rptr.2d 389, 820 P.2d 613; *Marks I, supra*, 45 Cal.3d at p. 1344, 248 Cal.Rptr. 874, 756 P.2d 260.) However, neither *Marks I* nor *Marks II* states whether, as in the present cases, the trial court instructed the jury *only* on first degree murder. Nor did either decision reconsider or add to *McDonald* 's section 1157 analysis as it relates to the issue we are now considering. Indeed, in *Marks II* we explained that *Marks I* 's brief discussion of section 1157 was not " 'necessary to the decision,' " given our determination there that the trial court "committed reversible error" in another respect. (*Marks II, supra*, 1 Cal.4th at p. 65, fn. 6, 2 Cal.Rptr.2d 389, 820 P.2d 613.) We also explained

that our "principal[ ] concern[ ]" in *Marks II* was not the meaning of section 1157's first sentence, which contains the language we are now construing, but was "the operation and effect of [section 1157's] second sentence by which a crime is deemed of the lesser degree." (*Marks II, supra,* 1 Cal.4th at p. 71, fn. 12, 2 Cal.Rptr.2d 389, 820 P.2d 613.) Thus, *Marks I* and *Marks II* provide an insufficient basis for following *McDonald* 's discussion in the cases now before us.

We are also mindful that our Courts of Appeal have been critical of *McDonald* and have adhered to it only grudgingly. In *Escobar, supra,* 48 Cal.App.4th at page 1027, 55 Cal.Rptr.2d 883, the court described the result *McDonald* requires as "neither just nor fair" and a " 'triumph[ ]' " of " 'form ... over substance.' " Nevertheless, the court applied section 1157 on facts analogous to those before us "under the compulsion of" *McDonald.* (*Escobar, supra,* 48 Cal.App.4th at p. 1026, 55 Cal.Rptr.2d 883.) In *People v. Dailey* (1996) 47 Cal.App.4th 747, 749, 55 Cal.Rptr.2d 171, another felony-murder case, the court reluctantly followed *McDonald,* concluding that it was "powerless" to do otherwise even though applying section 1157 might "reduce by decades" the sentences imposed. The court also discussed a number of "troublesome aspects" of this result. (*People v. Dailey, supra,* 47 Cal.App.4th at p. 754, 55 Cal.Rptr.2d 171.) In *In re Birdwell* (1996) 50 Cal.App.4th 926, 929, 58 Cal.Rptr.2d 244, the court noted that the *McDonald* rule has been "criticized for its inflexibility." And in *Bonillas,* Justice Arguelles wrote a concurring opinion, in which Justices Eagleson and Kaufman joined, that described "the reluctance expressed by the justices of our intermediate appellate courts" to apply *McDonald,* including one who "urg[ed] that *McDonald* ... be overruled. [Citation.]" (*Bonillas, supra,* 48 Cal.3d at p. 803, fn. 3, 257 Cal.Rptr. 895, 771 P.2d 844 (conc. opn. of Arguelles, J.).) The concerns and comments of the Courts of Appeal that have reluctantly followed *McDonald* "should not be ignored." (*Landrum v. Superior Court* (1981) 30 Cal.3d 1, 12, 177 Cal.Rptr. 325, 634 P.2d 352; see also *King, supra,* 5 Cal.4th at pp. 63, 72–75, 77, 19 Cal.Rptr.2d 233, 851 P.2d 27 [considering criticism by *****454** Courts of Appeal in reexamining and overruling precedent].) Indeed, even we have observed that under ***924** *McDonald,* "on occasion 'form triumphs over substance, and the law is traduced' [citation]...." (*Marks II, supra,* 1 Cal.4th at p. 74, 2 Cal.Rptr.2d 389, 820 P.2d 613.)

[28][29][30][31] We also conclude that the principle of stare decisis does not prevent us in these cases from reexamining *McDonald* 's discussion of section 1157. Because of the need for certainty, predictability, and stability in the law, we do not lightly overturn our prior opinions. (*Sierra Club, supra,* 21 Cal.4th at pp. 503–504, 87 Cal.Rptr.2d 702, 981 P.2d 543.) However, this policy does not " 'shield court-created error from correction,' " but "is a flexible one" that permits us "to reconsider, and ultimately to depart from, our own prior precedent in an appropriate case." ****286**(*Moradi–Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 296, 250 Cal.Rptr. 116, 758 P.2d 58; see also *King, supra,* 5 Cal.4th at p. 78, 19 Cal.Rptr.2d 233, 851 P.2d 27.) A key consideration in determining the role of stare decisis is whether the decision being reconsidered has become a basic part of a complex and comprehensive statutory scheme, or is simply a specific, narrow ruling that may be overruled without affecting such a statutory scheme. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1214–1216, 23 Cal.Rptr.2d 144, 858 P.2d 611.) *McDonald* "sets forth a narrow rule of limited applicability" and has not become a basic part of any comprehensive statutory scheme. (*Sierra Club, supra,* 21 Cal.4th at p. 505, 87 Cal.Rptr.2d 702, 981 P.2d 543.) Thus, "concerns other than stare decisis"—which we have discussed above—"predominate[ ]"; stare decisis does not mandate our continued adherence to *McDonald.*[FN14] (*People v. Latimer, supra,* 5 Cal.4th at p. 1216, 23 Cal.Rptr.2d 144, 858 P.2d 611; see also *Landrum, supra,* 30 Cal.3d at p. 14, 177 Cal.Rptr. 325, 634 P.2d 352 [we should overrule prior decision rather than "sacrifice legislative policies or create absurd procedures"].)

FN14. Justice Mosk suggests that our conclusion is contrary to the manner in which we have "consistently" construed section 1157. (Dis. opn. of Mosk, J., *post,* 98 Cal.Rptr.2d at p. 455, 4 P.3d at p. 287.) Justice Kennard asserts that we "disregard[ ]" this court's "consistent" interpretation of section 1157 "as requiring the jury to determine the degree regardless of the evidence or the instructions it receives." (Dis. opn. of Kennard, J., *post,* at p. 458, 4 P.3d at p. 289.) And Justice Werdegar insists that we must adhere to "this court's long-standing interpretation of section 1157." (Dis. opn. of Werdegar, J., *post,* at p. 465, 4 P.3d at p. 296.) However, neither Justice Mosk nor Justice Kennard cites a case

that discusses the issue here other than *McDonald*, a relatively recent (1984) decision. Although, after consideration, we have found *McDonald* 's dictum unpersuasive, we have not simply disregarded it. *People v. Beamon* (1973) 8 Cal.3d 625, 105 Cal.Rptr. 681, 504 P.2d 905 (*Beamon*), which Justice Werdegar cites in addition to *McDonald* (dis. opn. of Werdegar, J., *post*, at p. 466, 4 P.3d at p. 297), is not on point; nothing in it indicates that the trial court in that case instructed the jury on only one degree of the charged crime (robbery). On the contrary, by noting that the jury "failed to apply" a factual finding "to fix the degree" of the crime and "refrained from expressly fixing the degree," the *Beamon* opinion suggests that the trial court's instructions did, in fact, direct the jury to fix the crime's degree. (*Beamon*, *supra*, 8 Cal.3d at p. 629, fn. 2, 105 Cal.Rptr. 681, 504 P.2d 905.)

[32][33] Finally, "as is customary for judicial case law," we conclude that our holding may be applied to defendants Mendoza and Valle "and is otherwise fully retroactive." ***925**(*People v. Birks* (1998) 19 Cal.4th 108, 136, 77 Cal.Rptr.2d 848, 960 P.2d 1073.) Due process principles do not require a different conclusion, because our holding "neither expands criminal liability nor enhances punishment for conduct previously committed. [Citations.] ... [¶] No other inequity arises from retroactive application of [our] decision." (*Ibid.*) When they committed their crimes, defendants "acquired no cognizable reliance interest" in obtaining a verdict of second degree murder "by the means set forth in" *McDonald*. *****455**(*Birks*, *supra*, 19 Cal.4th at pp. 136–137, 77 Cal.Rptr.2d 848, 960 P.2d 1073.) Defendants do not, and cannot, claim that their cases "would have been conducted differently absent" *McDonald*. (*Birks*, *supra*, 19 Cal.4th at p. 137, 77 Cal.Rptr.2d 848, 960 P.2d 1073.) We therefore hold that the trial court properly entered judgments against defendants for first degree murder.

Given our conclusion that section 1157 does not apply in the present cases, we need not consider the Attorney General's alternative contention that article VI, section 13 of the California Constitution precludes us from setting aside defendants' convictions for first degree murder because any error in failure to comply with section 1157 did not "result[ ] in a miscarriage of justice."

CONCLUSION

The judgment of the Court of Appeal is affirmed.

GEORGE, C.J., BAXTER and BROWN, JJ., concur.

Dissenting Opinion By MOSK, J.

I dissent.

Penal Code section 1157 in pertinent part requires: "Whenever a defendant is convicted of a crime ... which is distinguished into degrees, the jury, or the court if a jury trial ****287** is waived, must find the degree of the crime ... of which he is guilty. Upon the failure of the jury or the court to so determine, the degree of the crime ... of which the defendant is guilty, shall be deemed to be of the lesser degree."

We have consistently, until today, taken the Legislature at its word, strictly construing Penal Code section 1157 to require an express indication by the trier of fact of the degree of the offense. (*People v. McDonald* (1984) 37 Cal.3d 351, 382, 208 Cal.Rptr. 236, 690 P.2d 709.) We have specifically rejected the argument, renewed herein, that when a jury is instructed solely on first degree murder, the failure of the jury to designate the degree does not trigger the default provision of the statute. Thus, in *People v. McDonald*, which I authored, we explained: "[T]he statute applies to reduce the degree even in situations in which the jury's intent to convict ***926** of the greater degree is demonstrated by its other actions.... [T]he key is not whether the 'true intent' of the jury can be gleaned from circumstances outside the verdict form itself; instead, application of the statute turns only on whether the jury specified the degree in the verdict form.... [¶] ... [¶] ... No special exception is created for the situation presented by this case [in which the jury was instructed solely on first degree murder]." (*Ibid.*)

Contrary to the majority's assertions, there is nothing "unjust"—let alone "absurd" (maj. opn., *ante*, 98 Cal.Rptr.2d at p. 443, 4 P.3d at p. 276)—about this simple bright-line rule as applied to a case involving a charge of felony murder. The clear legislative aim of the statute and its predecessor, section 21 of the amended Act Concerning Crimes and Punishments, dating back more than a century, is to avoid uncertainty with regard to the jury's actual verdict and to

promote justice and administrative efficiency by requiring a verdict that is clear on its face.[FN1]

> FN1. Section 21 of the Act Concerning Crimes and Punishments, as amended, provided: "[T]he jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict, whether it be murder of the first or second degree." (Stats.1856, ch. 139, § 2, p. 219.) In *People v. Campbell* (1870) 40 Cal. 129, 139, we held the statute to require that "the jury should expressly state the degree of murder in the verdict so that nothing should be left to implication on that point." Penal Code section 1157, first enacted in 1872, *continued the same requirement*, while broadening it to apply not only to murder, but to any crime divisible into degrees. Indeed, the preface to the 1872 Penal Code indicates the drafters' intent to retain the substance of existing law: "While many sections of existing laws have been redrawn to correct verbal errors and to give them precision and clearness, their spirit and substance have, in all cases, been preserved." (Code commrs., Preface, Ann. Pen.Code (1st ed. 1872, Haymond & Burch, commrs.-annotators) p. vi.)

*****456** Nor is the requirement under Penal Code section 1157 obscure or burdensome: "[The] rule is not arcane nor short on life. It is no Herculean task to require a jury finding on the degree of a murder." (*In re Birdwell* (1996) 50 Cal.App.4th 926, 931, 58 Cal.Rptr.2d 244.) Moreover, as a safeguard against inadvertent failure to specify such a finding in the verdict, Penal Code section 1164 requires the trial court, before discharging the jury, to verify on the record that the jury has reached a verdict on all issues before it, including the degree of the crime charged.

The majority, in a desperate attempt to discredit the analysis in *People v. McDonald, supra,* 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, assert that we erroneously relied therein on an analysis of section 21—a "*different* statute with *different* language" (maj. opn., *ante,* at 98 Cal.Rptr.2d p. 447, 4 P.3d at p. 279)—that was presumptively rejected by the Legislature in enacting Penal Code section 1157 in 1872 (maj. opn., *ante,* at p. 448, 4 P.3d at p. 280). The argument is specious; it finds no support in the legislative history, which, as noted, evinces the intent of the Commission for Revision of the Laws to "preserv[e]" the "spirit and substance" of existing law. (Code commrs., ***927** Preface, Ann. Pen.Code, *supra,* at p. vi.) Nor is there any support in the legislative history for the majority's assertion that the Legislature, in amending Penal Code section 1157 in 1951, must have "believed and intended" that the statute would not apply in the case of felony ****288** murder. (Maj. opn., *ante,* at p. 444, 4 P.3d at p. 277.)

As we observed in *McDonald,* "had the Legislature chosen to make section 1157 inapplicable to cases in which the jury was instructed on only one degree of a crime, it could easily have so provided." *(People v. McDonald, supra,* 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709.) Instead, by its inaction, it has "effectively acquiesced" in this court's interpretation of the statute. *(People v. Bonillas* (1989) 48 Cal.3d 757, 804, 257 Cal.Rptr. 895, 771 P.2d 844 (conc. opn. of Arguelles, J.).) Indeed, entreated to do so by some members of this court *(ibid.),* the Legislature has considered—*and rejected*—proposed amendments to the statute that would have superseded our long-standing judicial construction of its requirements. (See Sen. Bill No. 2572 (1989–1990 Reg. Sess.) § 1; Assem. Bill No. 2402 (1997–1998 Reg. Sess.) § 1.) The majority are grasping at straws in speculating that it is "at least plausible" that the Legislature, after nearly 150 years of consistent decisions in point, was simply " 'looking to this Court to correct its error' in *McDonald.*" (Maj. opn., *ante,* 98 Cal.Rptr.2d at p. 284, fn. 11, 4 P.3d at p. 452, fn. 11.) Rather, it is more plausible to conclude that the Legislature's retention of the long-standing requirement that the trier of fact designate degree, despite various amendments and proposed amendments to the statute, implies its continued endorsement of that provision. (See *People v. Ledesma* (1997) 16 Cal.4th 90, 100–101, 65 Cal.Rptr.2d 610, 939 P.2d 1310 [failure to change statute raised the presumption of the Legislature's acquiescence]; *People v. Bouzas* (1991) 53 Cal.3d 467, 475, 279 Cal.Rptr. 847, 807 P.2d 1076; cf. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 795, 38 Cal.Rptr.2d 699, 889 P.2d 1019 [defeat of repeated attempts to amend statute provided additional corroboration of legislative intent].)

Apparently impatient with the continued failure of the Legislature in this regard, the majority under-

take to limit the scope of the statute by judicial fiat. Overruling our settled construction of the statute, and contrary to its plain language, they now hold that the statute does not apply in this case because felony murder is not a crime *****457** "distinguished into degrees." (Pen.Code, § 1157.) The predicate for such an exception is unsound. It is, of course, true that felony murder, like any other form of murder designated as a crime of the first degree, e.g., murder by poison, by lying in wait, by torture, or any willful, premeditated killing (Pen.Code, § 189), is not further divisible into degrees. But Penal Code section 1157 addresses *generic crimes*, e.g., murder, robbery, burglary, not specific forms of those offenses. Felony murder is not a separate or distinct offense; indeed, defendants in this ***928** matter were charged with, and found guilty of, the crime of "murder" in violation of Penal Code section 187, subdivision (a)—not the crime of "felony murder."

Abandoning the simple bright-line test of *McDonald* that required the verdict to specify on its face the degree of the crime, the majority substitute a new standard under which the failure of the jury to specify degree may be excused—or not—depending on the theory or theories argued by the prosecution. The majority's approach is neither simple nor clear-cut; it will inevitably require examination on a case-by-case basis of the unique facts and circumstances to determine whether Penal Code section 1157 applies. The potential for costly and time-consuming litigation is obvious. Such a result does not, in my view, justify the majority's exercise of what is more appropriately the legislative prerogative.

With regard to the verdicts herein, I agree with Justice Kennard, for the reasons cogently stated in her dissenting opinion, that the failure of the jury to determine the degree of murder of which it found Raul Antonio Valle guilty required that his conviction be deemed to be one of second degree murder. In my view, the same result is required in the case of Cruz Alberto Mendoza because, as in the case of Valle, although the jury found him guilty of the offense of murder, it failed to specify the degree of the crime in the verdict form; nor do the minutes record a verdict specifying the degree of the crime.

Thus, unlike Justices Kennard and Werdegar, I am not persuaded that the trial court's ****289** polling of the jurors in the Mendoza case satisfied the requirements of Penal Code section 1157. After the verdict was rendered, finding Mendoza "guilty of the offense charged in Count I, a felony, to wit, murder in violation of Section 187(a) of the Penal Code of the State of California," the jurors were polled as to whether "that was your vote on the charge of murder 187 first degree" and each answered in the affirmative. But they had not been instructed to—and had not—deliberated on or reached a verdict fixing the degree of murder; indeed, Mendoza's request for an instruction requiring the jury to specify degree was rejected. Accordingly, the jurors did not endorse or assent to the verdict *actually returned and recorded in the minutes.* In effect, the trial court, in its polling of the jurors to determine unanimity of the verdict, merely imputed the additional finding to them; it did not purport to correct the verdict by such means or otherwise follow the appropriate procedures for doing so. (Cf. Pen.Code, §§ 1163, 1164; *People v. Cain* (1995) 10 Cal.4th 1, 53–56, 40 Cal.Rptr.2d 481, 892 P.2d 1224; *People v. Schroeder* (1979) 96 Cal.App.3d 730, 734–735, 158 Cal.Rptr. 220; *People v. Galuppo* (1947) 81 Cal.App.2d 843, 850–851, 185 P.2d 335.)

***929** Penal Code section 1157, like the statute on which it was modeled, "establishes a rule to which there is to be no exception, and the Courts have no authority to create an exception when the statute makes none. [¶] We have no right to disregard a positive requirement of the statute, as it is not our province to make the laws, but to expound them." *(People v. Campbell, supra,* 40 Cal. at p. 138 [construing § 21 of the Act Concerning Crimes and Punishments].)

For these reasons, I would hold that the convictions of Cruz Alberto Mendoza and Raul Antonio Valle must be deemed second*****458** degree murder as a matter of law pursuant to Penal Code section 1157.

Accordingly, I dissent.

Dissenting Opinion By KENNARD, J.

Our Penal Code provides that certain defined murders are "of the first degree" while "[a]ll other kinds of murders are of the second degree." (Pen.Code, § 189.) The Penal Code also provides that whenever a crime is "distinguished into degrees," the jury "must" find the degree of the crime of which the defendant is guilty. (Pen.Code, § 1157; hereafter section 1157.) If the jury fails to so determine the degree,

the crime "shall be deemed to be of the lesser degree." (*Ibid.*)

The majority holds that, contrary to the plain language of these statutes, an unwritten exception exists to section 1157: According to the majority, murder is not always a crime divided into degrees, and a defendant should be convicted of first rather than second degree murder notwithstanding the jury's failure to determine the degree if the prosecution presents evidence that would support only a first degree murder conviction and the court so instructs the jury.

I disagree. The majority disregards not only the plain language of section 1157, which admits no exceptions, but also this court's consistent interpretation of section 1157 as requiring the jury to determine the degree regardless of the evidence or the instructions it receives. Rather than rewriting section 1157 to create a novel exception, I would follow its clear command.

I

Defendants Cruz Alberto Mendoza and Raul Antonio Valle were tried by means of the simultaneous presentation of evidence to two separate juries, which separately convicted each defendant of murder, robbery, and burglary. Each jury also found true robbery-murder and burglary-murder special circumstances. Each jury recorded its decisions on written verdict forms, but ***930** the forms did not specify the degree of murder for either defendant. In the case of Mendoza but not Valle, the court polled the jury, asking each juror whether "that was your vote on the charge of murder 187 *first degree*." (Italics added.) Each juror individually answered "yes." The trial court pronounced judgment sentencing each defendant to life without parole, the punishment for first degree murder with a special circumstance.

On appeal, both defendants contended that section 1157 required the reduction of their murder convictions to second degree murder. ****290** The Court of Appeal disagreed, holding that, even if the jury's failure to determine degree in the verdict forms violated section 1157, the harmless error provision of article VI, section 13 of the California Constitution applied to the error. The Court of Appeal concluded the errors here were harmless on the ground that the evidence and instructions supported only a conviction for first degree murder under a felony-murder theory, and not a second degree murder conviction.

II

At issue here is section 1157: "Whenever a defendant is convicted of a crime or attempt to commit a crime which is distinguished into degrees, the jury, or the court if a jury trial is waived, must find the degree of the crime or attempted crime of which he is guilty. Upon the failure of the jury or the court to so determine, the degree of the crime or attempted crime of which the defendant is guilty, shall be deemed to be of the lesser degree." The prosecutor and the trial court bear responsibility for ensuring that the jury or the court complies with section 1157. (Pen.Code, § 1164, subd. (b); *People v. Superior Court (Marks)* (1991) 1 Cal.4th 56, 77, 2 Cal.Rptr.2d 389, 820 P.2d 613.)

To properly understand the function of section 1157, it is first necessary to recognize two federal "constitutional protections *****459** of surpassing importance: the proscription of any deprivation of liberty without 'due process of law,' Amdt. 14, and the guarantee that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury,' Amdt. 6. Taken together, these rights indisputably entitle a criminal defendant to 'a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.' " (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 120 S.Ct. 2348, 2355–2356, 147 L.Ed.2d 435], fn. omitted.) Section 1157 safeguards this right not to be convicted of the higher degree of a crime unless the trier of fact, whether judge or jury, has found all the elements constituting the higher degree of the crime. Although it might be constitutionally acceptable in cases where the trier of fact has not expressly stated ***931** the degree of the crime to reconstruct its intent from the evidence presented, the jury instructions, the arguments, the information, and other sources, the Legislature has chosen a higher degree of protection, as is its prerogative.

Murder is a crime divided into degrees. Penal Code section 189 divides murder into murders of the first degree and murders of the second degree. First degree murders as defined in section 189 include what are commonly referred to as felony murders—murders "committed in the perpetration of, or attempt to perpetrate," certain other crimes, including robbery. As we have previously recognized, in many homicides the evidence before the jury would permit it to return either a verdict of first degree murder under a felo-

ny-murder theory or a second degree murder verdict, in addition to other possible verdicts, depending upon what evidence the jury finds credible. *(People v. Jeter* (1964) 60 Cal.2d 671, 674–676, 36 Cal.Rptr. 323, 388 P.2d 355.)

The prosecution argues that section 1157 does not apply to a jury's failure to determine degree when, as here, the only theory of murder presented to the jury in the instructions and supported by the evidence was first degree murder based on a felony-murder theory. I disagree.

By its plain language, section 1157 applies without regard to the evidence the prosecution has presented in support of the crime or the instructions that the jury has received. Whenever the jury fails to determine the degree of a crime, the conviction by operation of law is "deemed to be of the lesser degree." (*Ibid.*) As the word "deemed" makes clear and as the entirety of section 1157 confirms, in such cases section 1157 makes no inquiry into what determination of degree the jury made or could have made under the facts of the case. Instead, to protect the constitutional rights of defendants the Legislature has created a bright-line rule that when the court and the prosecution fail in their duty to ensure that the jury expressly determines the degree of the crime, the conviction becomes one for the lesser degree of the crime. This is a policy ****291** judgment of the Legislature's that we are bound to respect.

Nor is the conclusion that section 1157 contains no exceptions novel. In *People v. McDonald* (1984) 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, the prosecution asserted that a verdict form finding the defendant guilty of murder without specifying the degree could nonetheless be construed as a first degree murder conviction under section 1157. It argued, as does the prosecution here, that the jury had impliedly found the defendant guilty of first degree murder, given that the jury was instructed only on first degree murder and given that it found true a robbery-murder special circumstance.

932** In an opinion Justice Mosk wrote for a unanimous court, we rejected that argument: "This precise contention has been rejected in a long line of decisions which require that the degree be explicitly specified by the verdict." *(People v. McDonald, supra,* 37 Cal.3d at p. 380, 208 Cal.Rptr. 236, 690 P.2d 709.) We continued:**460** "[T]he statute applies to reduce the degree even in situations in which the jury's intent to convict of the greater degree is demonstrated by its other actions.... [T]he key is not whether the 'true intent' of the jury can be gleaned from circumstances outside the verdict form.... [¶] ... [¶] ... [T]he terms of the statute are unambiguous. No special exception is created for the situation presented by this case; had the Legislature chosen to make section 1157 inapplicable to cases in which the jury was instructed on only one degree of a crime, it could easily have so provided. The statute requires that 'if the jury shall find the defendant guilty, the verdict shall specify the degree of murder.... It establishes a rule to which there is to be no exception, and the Courts have no authority to create an exception when the statute makes none.' " *(People v. McDonald, supra,* 37 Cal.3d at p. 382, 208 Cal.Rptr. 236, 690 P.2d 709, quoting *People v. Campbell* (1870) 40 Cal. 129, 138, 1870 WL 882.)

III

Applying section 1157 to the facts of this case yields these results: In the case of defendant Valle, the jury made no determination of the degree of the murder of which it found him guilty. Therefore, section 1157 deems his conviction to be one of second degree murder. In the case of defendant Mendoza, although the written verdict form did not specify the degree of murder, when the court subsequently polled the jurors and asked them whether their verdict was for "murder 187 first degree," they each responded "yes." This oral statement by the jury that Mendoza committed first degree murder is sufficient to satisfy section 1157, for there is no general requirement that the jury give its verdict in written form. (See Pen.Code, §§ 1149, 1164.) Accordingly, his conviction is for first degree murder.

IV

To rescue the prosecution in this case from its failure to insist that the jury state its finding as to degree in the case of defendant Valle, the majority is forced to adopt a novel and unsupported interpretation of section 1157 that is contrary to the statute's plain language. The majority holds that in a murder case in which the prosecution presents evidence supporting only a first degree murder verdict, murder becomes a crime no longer divided into degrees. (Maj. opn., *ante,* 98 Cal.Rptr.2d at p. 436, 4 P.3d at p. 269.)

The effect of the majority's holding is to treat

felony murder as though it were a separate crime. It is not, of course. Rather, it is only one of various ***933** alternative means by which one degree of murder may be committed. Doubtless, the Legislature could have chosen to create felony murder as a separate crime, rather than a form of one degree of murder; equally doubtless, it did not.

The majority ignores a fundamental principle of statutory construction: In determining legislative intent, we begin with the language of the statute, however unwise, ill-crafted, or imprudent we may think it to be. When the statutory language on its face answers the question before us, that answer is binding unless we conclude the language is ambiguous and its plain meaning does not correctly reflect the Legislature's intent. (*People v. Broussard* (1993) 5 Cal.4th 1067, 1071–1072, 22 Cal.Rptr.2d 278, 856 P.2d 1134; ****292***Burden v. Snowden* (1992) 2 Cal.4th 556, 562, 7 Cal.Rptr.2d 531, 828 P.2d 672.)

In *People v. McDonald, supra*, 37 Cal.3d 351, 382, 208 Cal.Rptr. 236, 690 P.2d 709, this court concluded that section 1157 is unambiguous and applies to every murder case, regardless of the evidence or instructions presented to the jury. In rejecting this conclusion, the majority here makes no claim that section 1157 is ambiguous. Rather, it makes the much more remarkable and far-reaching claim that the *sole* "plain and commonsense meaning" of *****461**section 1157 is that whether murder is a crime distinguished into degrees varies, depending on the factual theory of murder that the prosecution pursues. Nothing in section 1157, in section 189, or elsewhere in the Penal Code, however, even hints that whether a crime "is distinguished into degrees" depends on the evidence presented in a particular case rather than on whether the Legislature defined the crime in the Penal Code as a crime divided into degrees. Nor is there any suggestion in the Penal Code that the Legislature intended section 1157 to apply only to some and not all cases in which a jury has failed to determine the degree, depending on the evidence presented in support of the crime charged. The majority's rendering of section 1157 is not a plausible reading of section 1157, much less the sole plausible reading.

Even if the majority's eccentric reading of section 1157 were plausible enough to create a statutory ambiguity, however, the reasons presented by the majority would be insufficient to demonstrate that the majority's reading correctly reflects the Legislature's intent. In section 1157, the Legislature sought to advance justice and protect the rights of defendants. The means it chose was a bright-line rule that does not seek to discover what the jury actually but unspokenly decided as to the degree of the crime charged. Instead, under section 1157 a jury "must" in every case determine the degree. If it fails to, section 1157 "deem[s]" that as a matter of law the defendant may only be convicted of the lesser degree. The statute makes no exceptions to its rule.

***934** Section 1157 by its very nature may result in convictions for the lesser degree of the charged crime in some cases where the jury has probably intended to convict defendant of the greater crime but has failed to expressly state that finding. The Legislature, however, has chosen not to have courts make a case-by-case inquiry into the jury's unstated conclusions to attempt to divine what degree of crime the jury found.

The majority's position is founded on the fallacy that it is absurd and contrary to section 1157's purpose for the Legislature to advance its goal of protecting defendants by means of a bright-line rule. That the Legislature has chosen a bright-line rule that may result in a conviction for the lesser degree in some cases in which the jury would have convicted of the greater degree, however, does not make it absurd to apply the rule to those cases nor does it authorize us to rewrite the rule. There is nothing absurd in deferring to the plain language of Penal Code section 1157 and concluding that the Legislature intended the section to apply to all murder convictions, not just convictions based on certain theories of murder and not others. And it is fully consonant with, not contrary to, section 1157's purpose of protecting the rights of defendants to require in every case that a defendant not be convicted of the highest degree of a crime except when a jury expressly so finds on the record.

By judicially inventing an exception to section 1157 that the Legislature has chosen not to enact, the majority usurps the Legislature's authority. Had the Legislature intended such an exception, it could have easily enacted one, as this court noted in *People v. McDonald, supra*, 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, and as proposed legislation that the Legislature considered and rejected in 1990 and 1998 illustrates.

In 1990, a bill introduced in the Legislature would have permitted the following if the jury failed to expressly determine the degree: "[T]he trial court or an appellate court may fix the degree ... if it is able to determine from other jury findings in the same case the degree the jury intended to fix. If this determination cannot be made, ... [on timely motion] the defendant shall be entitled to a hearing ... before a new jury to determine the degree...." (Sen. Bill No. ****293** 2572 (1989–1990 Reg. Sess.) § 1.) This bill was not enacted, and instead the *****462** Legislature amended Penal Code section 1164 in 1990 to require trial courts, before discharging a jury, to verify on the record that the jury has determined the degree of the crime.

In 1998, another bill introduced in the Legislature would have permitted the trial court to determine the degree from the "admitted evidence, the charging instrument, jury instructions given, or other jury findings that were ***935** made" and to "set the degree at the higher level where there is clear and reliable evidence to support such a determination." (Assem. Bill No. 2402 (1997–1998 Reg. Sess.) § 1.) If the court was not able to determine the degree, it could then "either set the degree at the lower level or order a new trial, the sole issue of which shall be the determination of degree." (*Ibid.*) The bill was then amended to provide that section 1157 "shall only apply to the situation where the finder of fact has a choice as to the degree" and that "If the crime ... for which the defendant was convicted is a specified degree as a matter of law, upon the failure of the jury to determine the degree ..., the court may fix the degree as specified. In determining whether the degree of the offense is a specified degree as a matter of law, the court may refer to the descriptive substantive definitions contained in the charging document, any factual finding contained in the verdict form, the fact that the jury was only instructed on a specified degree and not any lesser degree, or the fact that the jury was only instructed on one theory of the case." (Assem. Amend. to Assem. Bill No. 2402 (1997–1998 Reg. Sess.) Apr. 29, 1998.) This bill too was never enacted.

The majority also rejects as dictum this court's conclusion in *People v. McDonald, supra*, 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709, that section 1157 applies in murder cases prosecuted under a felony-murder theory. Whether or not it is dictum is irrelevant, for it is soundly reasoned and reaches the most sensible interpretation of section 1157. Moreover, this interpretation finds support in 150 years of California law, as I discuss next.

Section 1157 derives from a statute originally enacted in 1856 that accomplished several purposes. (Stats. 1856, ch. 139, § 2, p. 219; hereafter the 1856 statute.) The 1856 statute was the first to divide the crime of murder into degrees; previously, murder had been a unitary crime. In doing so, the 1856 statute assigned murder committed in the course of certain felonies to the category of first degree murder. (*Ibid.*) Finally, it required the jury to determine the degree of murder. It accomplished all of this in a single sentence: "All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict, whether it be murder of the first or second degree...." (*Ibid.*)

There is no doubt, and the majority does not dispute, that the plain language of the 1856 statute required the jury in every murder case to ***936** specify the degree of the murder, regardless of the evidence or argument presented in support of the charge. This court so held 130 years ago in *People v. Campbell, supra*, 40 Cal. 129, 138, where we specifically rejected the argument that no determination of degree was necessary if "it is not possible, from the nature of the case, that the accused could be lawfully convicted of murder in the second degree." The court stated: "We have no right to disregard a positive requirement of the statute, as it is not our province to make laws, but to expound them.... The word 'designate,' as here employed, does not imply that it will be sufficient for the jury to intimate or give *****463** some vague hint as to the degree of murder of which the defendant is found guilty; but it is equivalent to the words 'express' or 'declare,' and it was evidently intended that the jury should expressly state the degree of murder in the verdict so that nothing should be left to implication on that point.... However absurd it may, at the first blush, appear to be to require the ****294** jury to designate the

degree of the crime, when it appears on the face of the indictment that the offence charged has but one degree, there are plausible and, perhaps, very sound reasons for this requirement.... But whatever may have been the reasons for this enactment, it is sufficient for the Courts to know that the law is so written and it is their duty to enforce it." (*Id.* at pp. 138–140.)

It would have been absurd for the court in *People v. Campbell, supra*, 40 Cal. 129, to reach a contrary result. That would have required concluding that, even though the 1856 statute in the same sentence both defined first degree murder to include killings committed in the course of certain felonies and required juries to find the degree of the murder committed, the latter portion of the sentence unaccountably did not apply to the earlier portion.

In 1872, as part of the general codification of California law, the 1856 statute was replaced by section 1157. As originally enacted as part of the Penal Code of 1872, section 1157 provided: "Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty." Section 1157 did change the 1856 statute, but it did so by generalizing the rule's application from the crime of murder alone, as was the case under the 1856 statute, to every crime "distinguished into degrees." The majority here suggests that, by deleting the reference to murder indictments that had been present in the 1856 statute, the Legislature in 1872 intended to abrogate this court's decision in *People v. Campbell, supra*, 40 Cal. 129. Obviously, however, the purpose of deleting the reference to murder indictments was to broaden the statute's application to include all crimes of degree, not to narrow its application to include only some cases of murder. Nor is there any evidence in the legislative history of the 1872 version of section 1157 that it was intended to narrow the 1856 ***937** statute. The annotations made to section 1157 by the commissioners who drafted it as part of the 1872 Penal Code cite *Campbell* with apparent approval and without any suggestion that section 1157 was intended to abrogate *Campbell*'s holding. (Code commrs., note foll. Ann. Pen.Code, § 1157 (1st ed. 1872, Haymond & Burch, commrs.-annotators) pp. 404–405.)

Moreover, section 5 of the Penal Code, enacted as part of the 1872 codification and continuing in effect to this day, provides: "The provisions of this Code, so far as they are *substantially* the same as existing statutes, must be construed as continuations thereof, and not as new enactments." (Italics added.) Because section 1157 is substantially the same as the 1856 statute, especially with respect to the crime of murder, "the codified act carries the same [judicial] interpretation as the original one." (*People v. Ellis* (1928) 204 Cal. 39, 44, 266 P. 518 [concluding the bigamy prohibition enacted as part of the 1872 Penal Code should be interpreted the same as pre–1872 bigamy statute, despite significant changes in wording between the two provisions].) That is, we must interpret section 1157 as this court interpreted the 1856 statute in *People v. Campbell, supra*, 40 Cal. 129.

And this court has done so. In 1887, 15 years after the enactment of section 1157, this court relied on *People v. Campbell, supra*, 40 Cal. 129, in interpreting section 1157, explaining its reliance in these terms: "The [1872 Penal] [C]ode has extended this provision to all crimes 'distinguished into degrees.' Therefore the construction given to the clause of the [1856] statute as it existed before the code, in murder cases, may guide us in construing it in its broader*****464** application." (*People v. Travers* (1887) 73 Cal. 580, 581, 15 P. 293.)

Since 1872, section 1157 has been amended three times. It was amended in 1949 to provide that the consequence of a jury's failure to specify degree is a conviction for the lesser degree rather than, as formerly, a new trial. (Stats.1949, ch. 800, § 1, p. 1537.) It was then amended in 1951 to expand its scope to include convictions in court trials as well as jury trials. (Stats.1951, ch. 1674, § 109, p. 3849.) It was again amended in 1978 to expand its scope to include convictions for attempts to commit crimes of degree. (Stats.1978, ch. 1166, § 4, p. 3771.) All three amendments retained unchanged the "crime ... distinguished into degrees" ****295** formulation of the original 1872 version of section 1157 and none of them evidenced any intention to limit the application of section 1157 in cases where the prosecution presents evidence directed at only a single degree of a crime.

As this review shows, the majority subverts both the plain language and the long history of section 1157 when it concludes that the statute contains ***938** an unwritten exception whose application depends upon the evidence presented by the prosecution. There is no

basis at this late date to change course and abandon our settled conclusion that the statute governs in all cases in which the jury fails to determine degree, an interpretation which faithfully adheres to the statute's plain language.

V

The prosecution argues that, even if defendant Valle's jury failed to comply with section 1157, the judgment imposing on him a first degree murder sentence should be affirmed under article VI, section 13 of the California Constitution (hereafter article VI, section 13). That section provides: "No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (*Ibid.*)

Article VI, section 13 does not salvage the trial court's judgment punishing Valle for first degree murder. Once the jury returned a verdict of murder without specifying the degree and was discharged, section 1157 made Valle's conviction one for second degree murder by operation of law. The error here was the trial court's failure to recognize that Valle's conviction was for second degree murder and to sentence him accordingly. This error was obviously prejudicial to Valle, resulting in an illegal sentence exceeding the maximum permitted for a second degree murder conviction.

CONCLUSION

For the reasons given above, I would affirm the first degree murder conviction of defendant Mendoza, while I would reduce the first degree murder conviction of defendant Valle to second degree murder.

WERDEGAR, J., concurs.

Dissenting Opinion By WERDEGAR, J.

I dissent, albeit reluctantly. The majority opinion amply illustrates the illogic of a strict application of Penal Code [FN1] section 1157 to the facts of this case. The People proceeded solely on a first degree felony-murder theory when prosecuting defendants; the jury was instructed solely on first degree murder; and, on the facts of this case, the only reasonable verdict for the homicide-related counts was murder in the first degree or ***939** acquittal. A judgment of murder in the second degree has no factual predicate and, as the majority explains (maj. opn., *ante*, 98 Cal.Rptr.2d at p. 442, 4 P.3d at p. 275), had the jury *****465** returned a second degree verdict, the trial court could have refused to accept it, reinstructed the jury, and directed it to reconsider its verdict. (See § 1161.) Accordingly, reducing defendant Raul Antonio Valle's [FN2] conviction to murder in the second degree is artificial, fails to reflect his true culpability, and is not a just result for this murderer.

FN1. All statutory references are to this code.

FN2. I agree with Justice Kennard that the polling of the jury provides sufficient justification to conclude the degree of defendant Valle's murder conviction must be lowered, but that of his codefendant Cruz Alberto Mendoza need not be.

Nevertheless, the issue raised in this case transcends our concern that Valle's conviction reflect his true culpability. The history of section 1157, including the recent amendments to both sections 1157 and 1164, subdivision (b), demonstrates persuasively that the Legislature has acquiesced to the fairly rigid interpretation this court has given to section 1157. As explained in Justice Kennard's dissenting opinion, that interpretation, which would require lowering the degree of the ****296** murder for defendant Valle, is one of almost ancient lineage.

Section 1157 represents a legislative response to the situation where a jury, in convicting a defendant of an offense divided into degrees, fails to specify the degree of the offense. As the majority explains (maj. opn., *ante*, 98 Cal.Rptr.2d at p. 443, 4 P.3d at p. 276), before the Legislature in 1949 amended section 1157 to provide that in such circumstances the degree of the crime shall be deemed the lesser degree, the judicially declared rule was that a jury's failure to determine degree entitled the defendant to a new trial. Section 1157, therefore, represents the Legislature's considered decision, in fashioning a just remedy for the error, to reject retrial as a remedy. In so doing, the Legislature balanced a variety of factors. These include, on the one hand, the financial cost of retrial, the emotional cost to the victims and other witnesses who must again testify at the retrial, and the possibility the defendant could be acquitted on retrial. Balanced

against these costs, on the other hand, are a defendant's constitutional right to have a jury decide all the elements of the charged crime, the infrequency of the error, the ability of the prosecutor to call attention to an omission before the jury is discharged, the statutory duty of the trial court to ensure—and verify on the record—that the jury has reached a verdict on the degree of the crime (§ 1164, subd. (b)), and fairness to the defendant, who would have to run the gauntlet a second time. The Legislature's solution was to eschew retrial, but to reduce the offense to the lesser degree as a matter of law.

That the Legislature's resolution of this problem is not necessarily the one I would have chosen is of no consequence; it is the one the Legislature did ***940** choose and has adhered to. Nor is it, as the majority proclaims, an "absurd" policy choice (maj. opn., *ante*, 98 Cal.Rptr.2d at pp. 443–444, 4 P.3d at pp. 276–277). To balance the complex policy concerns involved in cases in which the jury fails to specify the degree of a crime, and conclude a clear bright-line rule should govern, is not absurd even in those few cases in which a guilty defendant might obtain an unjust benefit.

In any event, it appears the Legislature has acquiesced to this court's long-standing interpretation of section 1157, and we are not at liberty to disregard its views. Judicial restraint and respect for the Legislature's work compel that we adhere to our previous interpretations absent some indication the Legislature intends some different meaning. " '[A]s this court has often recognized, the judicial role in a democratic society is fundamentally to interpret laws, not to write them. The latter power belongs primarily to the people and the political branches of government....' *****466**(*Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 675 [47 Cal.Rptr.2d 108, 905 P.2d 1248] (conc. opn. of Werdegar, J.).) It cannot be too often repeated that due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature. 'This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed.' " (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 633, 59 Cal.Rptr.2d 671, 927 P.2d 1175, quoting *Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 365, 5 P.2d 882.)

Members of this court and of the lower appellate courts have urged the Legislature to look at section 1157 anew (see *People v. Bonillas* (1989) 48 Cal.3d 757, 803, fn. 3, 257 Cal.Rptr. 895, 771 P.2d 844 (conc. opn. of Arguelles, J.), and cases cited), explaining in strong language the anomalous results that can occur from a strict application of the statute (see, e.g., *People v. Thomas* (1978) 84 Cal.App.3d 281, 285, 148 Cal.Rptr. 532 (conc. opn. of Ashby, J.) [strict application of § 1157 requires appellate court "to exalt form over substance"]). The Legislature, in 1990, responded by amending section 1164 to require that trial courts, before discharging the jury, ensure that the jury rendered a verdict on the degree of the crime. (Stats.1990, ch. 800, § 1, p. 3548; see *People v. Superior Court (Marks)* (1991) 1 Cal.4th 56, 73, fn. 15, 2 Cal.Rptr.2d 389, 820 P.2d 613 [urging "strict compliance [with § 1164] to forestall procedural quagmires"].) This amendment to section 1164 was the Legislature's****297** way of addressing the problem; we should honor the legislative choice.

Although the majority's reinterpretation of section 1157 admittedly would impose on defendant Valle a sentence commensurate with his culpability, I ***941** find I cannot endorse the majority's reasoning without intruding on the role of the Legislature. Accordingly, until that body amends section 1157 to change the statute's meaning from the bright-line rule it now provides to one permitting an examination of the individual facts of each case, I would reluctantly adhere to our previous interpretation of that statute (*People v. McDonald* (1984) 37 Cal.3d 351, 208 Cal.Rptr. 236, 690 P.2d 709; *People v. Beamon* (1973) 8 Cal.3d 625, 629, fn. 2, 105 Cal.Rptr. 681, 504 P.2d 905) and therefore dissent.

Cal.,2000.
People v. Mendoza
23 Cal.4th 896, 4 P.3d 265, 98 Cal.Rptr.2d 431, 00 Cal. Daily Op. Serv. 6329, 2000 Daily Journal D.A.R. 8387

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Supreme Court of California
Alexandra VAN HORN, Plaintiff and Appellant,
v.
Anthony Glen WATSON et al., Defendants and Respondents;
Anthony Glen Watson, Cross-complainant and Appellant,
v.
Lisa Torti, Cross-defendant and Respondent.

No. S152360.
Dec. 18, 2008.
Rehearing Denied Feb. 11, 2009.[FN*]

FN* Baxter, Chin, and Corrigan, JJ., are of the opinion that the petition should be granted.

Background: Automobile accident victim sued defendant and others, alleging that defendant's negligence in removing victim from vehicle caused victim to suffer permanent paraplegia. The Superior Court, Los Angeles County, No. 034945,Howard J. Schwab, J., granted summary judgment for defendant on the ground that she was entitled to statutory immunity from liability. Victim and a co-defendant appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holding: The Supreme Court, Moreno, J., held that immunity for emergency care rendered at the scene of an emergency applies only to medical care rendered at the scene of a medical emergency.

Baxter, J., filed concurring and dissenting opinion, in which Chin and Corrigan, JJ., joined.

Opinion, 56 Cal.Rptr.3d 272, superseded.

West Headnotes

[1] Negligence 272 282

272 Negligence
272VI Vulnerable and Endangered Persons; Rescues
272k282 k. Duty in general. Most Cited Cases

Under well-established common law principles, a person generally has no duty to come to the aid of another.

[2] Negligence 272 283

272 Negligence
272VI Vulnerable and Endangered Persons; Rescues
272k283 k. Care required in general. Most Cited Cases

Negligence 272 284

272 Negligence
272VI Vulnerable and Endangered Persons; Rescues
272k284 k. “Good Samaritan” doctrine and statutes. Most Cited Cases

If a person elects to come to someone's aid, he or she has a duty to exercise due care; thus, a “good Samaritan” who attempts to help someone might be liable if he or she does not exercise due care and ends up causing harm.

[3] Statutes 361 181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In general. Most Cited Cases

A court's primary duty when interpreting a statute is to determine and effectuate the Legislature's intent.

[4] Statutes 361 188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

In construing a statute, courts' first task is to examine the words of the statute, giving them a commonsense meaning.

[5] Statutes 361 190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of ambiguity. Most Cited Cases

In construing a statute, if the language is clear and unambiguous, the inquiry ends.

[6] Statutes 361 208

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k208 k. Context and related clauses. Most Cited Cases

A statute's language must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible.

[7] Statutes 361 189

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k189 k. Literal and grammatical interpretation. Most Cited Cases

In the construction of a statute, a literal construction should not prevail if it is contrary to the legislative intent apparent in the statute.

[8] Statutes 361 183

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k183 k. Spirit or letter of law. Most Cited Cases

In statutory construction, the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.

[9] Health 198H 769

198H Health
198HV Malpractice, Negligence, or Breach of Duty
198HV(E) Defenses
198Hk769 k. Good Samaritan doctrine. Most Cited Cases

Statute providing that "no person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission" applies only to the rendering of emergency medical care at the scene of a medical emergency. West's Ann.Cal.Health & Safety Code § 1799.102.
See Cal. Jur. 3d, Healing Arts and Institutions, § 404; Cal. Jur. 3d, Negligence, § 12; Cal. Civil Practice (Thomson Reuters/West 2008) Torts, § 1:13; Flahavan et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2008) ¶ 2:963 (CAPI Ch. 2-E); 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 132.

[10] Health 198H 769

198H Health
198HV Malpractice, Negligence, or Breach of Duty
198HV(E) Defenses
198Hk769 k. Good Samaritan doctrine. Most Cited Cases

"Emergency care," as used in statute providing that "no person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission," means emergency

medical care. West's Ann.Cal.Health & Safety Code § 1799.102.

[11] Municipal Corporations 268 747(4)

268 Municipal Corporations
268XII Torts
268XII(B) Acts or Omissions of Officers or Agents
268k747 Particular Officers and Official Acts
268k747(4) k. Health and education. Most Cited Cases

The definition of "emergency services," as used in statute providing that "a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services," is distinct from the definition of "emergency care" in statute establishing immunity for rendering emergency care at the scene of an emergency. West's Ann.Cal.Health & Safety Code §§ 1799.102, 1799.107.

[12] Statutes 361 217.3

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.3 k. Legislative hearings, reports, etc. Most Cited Cases

Although the Legislative Counsel's summary digests are not binding in statutory interpretation, they are entitled to great weight.

[13] Negligence 272 234

272 Negligence
272III Standard of Care
272k234 k. Voluntarily assumed duties. Most Cited Cases

One who assumes to act, even though gratuitously, may thereby become subject to a duty of acting carefully, if he acts at all.

[14] Statutes 361 212.5

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.5 k. Intention to change law. Most Cited Cases

Courts do not presume that the Legislature intends, when it enacts a statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied.

[15] Statutes 361 223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In general. Most Cited Cases

Axioms of statutory interpretation counsel courts to avoid constructions that would render other statutes superfluous.

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David K. Park; Hughes Hubbard & Reed, Rita M. Haeusler, Los Angeles, George A. Davidson, Carla A. Kerr and Scott H. Christensen for Boy Scouts of America as Amicus Curiae on behalf of Cross-defendant and Respondent.

MORENO, J.

165 [1][2] *324 Under well-established com-

mon law principles, a person has no duty to come to the aid of another. ***352*(Artiglio v. Corning, Inc.* (1998) 18 Cal.4th 604, 613, 76 Cal.Rptr.2d 479, 957 P.2d 1313; *Williams v. State of California* (1983) 34 Cal.3d 18, 23, 192 Cal.Rptr. 233, 664 P.2d 137.) If, however, a person elects to come to someone's aid, he or she has a duty to exercise due care. *(Williams, supra*, 34 Cal.3d at p. 23, 192 Cal.Rptr. 233, 664 P.2d 137.) Thus, a "good Samaritan" who attempts to help someone might be liable if he or she does not exercise due care and ends up causing harm. *(Ibid.)* The Legislature has enacted certain statutory exceptions to this due care requirement. One such statute, Health and Safety Code section 1799.102, immunizes any "person who ... renders emergency care at the scene of an emergency ..." from liability for civil damages.[FN1]

FN1. All further unlabeled statutory references are to the Health and Safety Code.

***325** In this case, defendant Lisa Torti removed plaintiff Alexandra Van Horn from a vehicle involved in an accident and, by so doing, allegedly caused Van Horn to become paralyzed. In the resultant suit for negligence, Torti argued that she had provided "emergency care at the scene of an emergency" ****166** and was immune under section 1799.102. The trial court agreed and granted her motion for summary judgment, but the Court of Appeal reversed. We granted review to determine the scope of section 1799.102. We hold that the Legislature intended for section 1799.102 to immunize from liability for civil damages any person who renders emergency *medical* care. Torti does not contend that she rendered emergency medical care and she may not, therefore, claim the immunity in section 1799.102. Accordingly, we affirm the judgment of the Court of Appeal.

I. BACKGROUND

During the evening of October 31, 2004, plaintiff, Torti, and Jonelle Freed were relaxing at Torti's home where plaintiff and Torti both smoked some marijuana.[FN2] After defendants Anthony Glen Watson and Dion Ofoegbu arrived, they all went to a bar at around 10:00 p.m., where they consumed several drinks. They remained at the bar until about 1:30 a.m., at which point they left.

FN2. The factual and procedural history is largely taken from the Court of Appeal's opinion.

Plaintiff and Freed rode in a vehicle driven by Watson; Torti rode in a vehicle driven by Ofoegbu. Watson lost control of his vehicle and crashed into a curb and light pole at about 45 miles per hour, knocking a light pole over and causing the vehicle's front air bags to deploy. Plaintiff was in the front passenger seat. When Watson's vehicle crashed, Ofoegbu pulled off to the side of the road and he and Torti got out to help. Torti removed plaintiff from Watson's vehicle. Watson was able to exit his vehicle by himself and Ofoegbu assisted Freed by opening a door for her.

There are conflicting recollections about several critical events: Torti testified at deposition that she saw smoke and liquid coming from Watson's vehicle, and she removed plaintiff from the vehicle because she feared the vehicle would catch fire or "blow up." Torti also testified that she removed plaintiff from the vehicle by placing one arm under plaintiff's legs and the other behind plaintiff's back to lift her out. Others testified, on the other hand, that there was no smoke or any other indications that the vehicle might explode and that Torti put plaintiff down immediately next to the car. Plaintiff testified that Torti pulled her from the vehicle by grabbing her by the arm and yanking her out "like a rag doll."

***326** Emergency personnel arrived moments later and plaintiff and Freed were treated and transported to the hospital. ***353** Plaintiff suffered various injuries, including injury to her vertebrae and a lacerated liver that required surgery, and was permanently paralyzed.

Plaintiff sued Watson, Ofoegbu, and Torti. Plaintiff asserted a negligence cause of action against Torti, alleging that even though plaintiff was not in need of assistance from Torti after the accident and had only sustained injury to her vertebrae, Torti dragged plaintiff out of the vehicle, causing permanent damage to her spinal cord and rendering her a paraplegic. Torti and Watson cross-complained against each other for declaratory relief and indemnity. After some discovery, Torti moved for summary judgment, arguing that she was immune under section 1799.102. The trial court granted Torti's motion. [FN3]

FN3. Although Torti's motion addressed only plaintiff's complaint, Torti and Watson stip-

ulated that the trial court's order had a res judicata and/or collateral estoppel effect on their cross-complaints against each other. Plaintiff and Watson both appealed, and their appeals were consolidated.

The Court of Appeal reversed. It held that the Legislature intended for section 1799.102 to apply only to the rendering of emergency *medical* care at the scene of a *medical* emergency and that Torti did not, as a matter of law, render such care.[FN4] Such a construction, the Court of Appeal explained, is consistent with the statutory scheme of which section 1799.102 is a part. We granted review.

FN4. As previously noted, Torti does not contend that her actions at the scene of the automobile accident constituted medical care. Although we hold that section 1799.102 applies only to the rendering of emergency medical care, we express no opinion as to what constitutes such care.

****167 II. DISCUSSION**

[3][4][5][6] Our primary duty when interpreting a statute is to " 'determine and effectuate' " the Legislature's intent.[FN5] (*Lennane v. Franchise Tax Board* (1994) 9 Cal.4th 263, 268, 36 Cal.Rptr.2d 563, 885 P.2d 976.) To that end, our first task is to examine the words of the statute, giving them a commonsense meaning. (*People v. Nguyen* (2000) 22 Cal.4th 872, 878, 95 Cal.Rptr.2d 178, 997 P.2d 493.) If the language is clear and unambiguous, the inquiry ends. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103, 56 Cal.Rptr.3d 880, 155 P.3d 284.) However, a statute's language must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. (*Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) With these principles of statutory construction in mind, we turn to the language of the provision.

FN5. We conduct a de novo review of the Court of Appeal's statutory construction of section 1799.102. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 683, 102 Cal.Rptr.2d 97, 13 P.3d 704.)

[7][8][9] ***327** Section 1799.102 provides, "No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered." The parties identify two possible constructions of this provision: Torti urges us to conclude that it broadly applies to both nonmedical and medical care rendered at the scene of any emergency; plaintiff, on the other hand, argues that section 1799.102 applies only to the rendering of emergency *medical* care at the scene of a *medical* emergency. While section 1799.102 is certainly susceptible*****354** of Torti's plain language interpretation, a "[l]iteral construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.) We conclude for several reasons that, when the statutory language is viewed in context, the narrower construction identified by plaintiff is more consistent with the statutory scheme of which section 1799.102 is a part.

A. The Statutory Scheme and Related Provisions

1. Purpose of the Scheme in Which Section 1799.102 Is Located

Section 1799.102 is located in division 2.5 of the Health and Safety Code. That division, titled "Emergency Medical Services" by the Legislature, was enacted as the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (Act). (§ 1797; Stats.1980, ch. 1260, § 7, p. 4261.) One can infer from the location of section 1799.102 in the Emergency *Medical* Services division, as well as from the title of the act of which it is a part, that the Legislature intended for section 1799.102 to immunize the provision of emergency *medical* care at the scene of a medical emergency. (*People v. Hull* (1991) 1 Cal.4th 266, 272, 2 Cal.Rptr.2d 526, 820 P.2d 1036.) [FN6]

FN6. The Court of Appeal reasonably concluded that "[a] general immunity statute would more likely be found in the Civil Code...." Torti disagrees, noting that "the seminal Good Samaritan statute lies in [ ] Business [and] Professions Code [section 2395]." However, that provision applies to

> licensed physicians and, as such, its placement in the Business and Professions Code is unsurprising. On the other hand, one would not expect a statute broadly immunizing from liability *any* person who renders *any* type of care at the scene of *any* emergency to be located in the Health and Safety Code, let alone division 2.5, the Emergency Medical Services division of that code.

328** Additionally, apart from the name of the division and the Act, the Legislature made clear in numerous other statutes that it intended for the statutory scheme to address the provision of emergency *medical* care. For example, in section 1797.1, the Legislature declared that it is the intent of the Act "to provide the state with a statewide system for emergency *medical* services...." (Italics added.) In section 1797.6, subdivision (a), the Legislature declared that it is "the policy of the State of California to ensure the provision*168** of effective and efficient emergency *medical* care." (Italics added.) Indeed, nowhere in the Act's general provisions (Health & Saf.Code, div. 2.5, ch. 1, §§ 1797–1797.8) is there any indication that the Legislature intended to address or affect the provision of *nonmedical* care.

Section 1797.5 is even more illuminating. That statute explains that "It is the intent of the Legislature to promote the *development, accessibility, and provision of emergency medical services* to the people of the State of California. [¶] Further, it is the policy of the State of California that people shall be *encouraged and trained to assist others at the scene of a medical emergency*. Local governments, agencies, and other organizations shall be *encouraged to offer training in cardiopulmonary resuscitation and lifesaving first aid techniques* so that people may be adequately trained, prepared, and encouraged to assist others immediately." (Italics added.) Section 1797.5 thus establishes that the Legislature intended to encourage people to learn and provide emergency *medical* care (such as the cardiopulmonary resuscitation and first aid specifically identified in section 1797.5) to those in need. The Act's stated *****355** purpose supports construing section 1799.102 to immunize only those who render such emergency medical care at the scene of a medical emergency.

Construing section 1799.102 to apply only to the rendering of emergency medical care is also in keeping with adjoining section 1799.100 (there is no section 1799.101), another immunity provision. Section 1799.100 provides: "In order to encourage local agencies and other organizations to train people in emergency medical services, no local agency, entity of state or local government, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of people, or certifies those people ... shall be liable for any civil damages alleged to result from those training programs." Read together, sections 1799.100 and 1799.102 first immunize those who train persons in emergency medical care and then immunize the persons who actually render such care. The strong inference to ***329** be drawn is that the Legislature intended for both statutes to apply to emergency medical care. *(Dyna–Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at p. 1387, 241 Cal.Rptr. 67, 743 P.2d 1323 [explaining that courts should harmonize statutes related to the same subject].)

2. Definition of "Emergency" in Section 1797.70

Chapter 2 of division 2.5, Emergency Medical Services, contains definitions which govern the provisions of the division. (§ 1797.50; see §§ 1797.52–1797.97.) Of particular relevance is section 1797.70, which defines "emergency" as meaning "a condition or situation *in which an individual has a need for immediate medical attention,* or where the potential for such need is perceived by emergency personnel or a public safety agency." (Italics added.) Section 1799.102, the provision at issue here, immunizes persons who render "*emergency* care at the scene of an *emergency* ...." (Italics added.) Section 1797.70 thus makes clear that the phrase "scene of an emergency" in section 1799.102 refers to the scene of a *medical* emergency.[FN7]

> FN7. At oral argument, counsel for Watson and Van Horn suggested that there was a factual dispute over whether Van Horn was at the "scene of an emergency." We disagree. The Court of Appeal concluded that Van Horn, "having been injured in a car accident, required immediate medical attention," and nowhere in their briefing did counsel take issue with the court's conclusion. Nor, in their oppositions to Torti's motion for summary judgment, did counsel identify any factual disputes about whether Van Horn needed immediate medical attention.

[10] Although the phrase "emergency care" is not separately defined, section 1797.70's definition of "emergency" certainly supports the conclusion that the Legislature intended for "emergency care" to be construed as meaning emergency *medical* care. After all, if the "scene of an emergency" (§ 1799.102) means a scene where "an individual has a need for *immediate medical attention* " (§ 1797.70, italics added), it logically follows that the Legislature intended for the phrase "emergency care" in section 1799.102 to refer to the *medical attention* given to the individual who needs it.

****169** This construction also comports with the second sentence of section 1799.102, which reads: "The scene of an emergency shall not include emergency departments and other places where medical care is usually offered." While this sentence does not directly shed light on the intended meaning of the phrase "emergency care" in the previous sentence of section 1799.102, the fact that the Legislature excluded*****356** "emergency departments and other places where medical care is usually offered" from section 1799.102's immunity supports construing "emergency care" as meaning emergency ***330** *medical* care—the exclusion suggests that "emergency departments and other places where medical care is usually offered" are locations where the Legislature did not need (or want) to encourage ordinary citizens to provide emergency medical care because trained medical personnel are available to better render such care.

3. Definition of "Emergency Services" in Section 1799.107

Section 1799.107 encourages public entities and emergency rescue personnel to render emergency assistance by providing that "a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services." (*Id.*, subd. (a).) The Legislature defined the phrase "emergency services" in subdivision (e) of the provision, stating that "[*f*]*or purposes of this section,* 'emergency services' includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril." (Italics added.) Section 1799.107 thus explicitly immunizes from liability emergency rescue personnel who render medical *and/or nonmedical* care.

[11] While the Legislature broadly defined the phrase "emergency services" in section 1799.107, subdivision (e), it explicitly limited the definition's application to that provision. This implies for a number of reasons that the Legislature intended for "emergency services" in section 1799.107 to be construed more broadly than "emergency care" in section 1799.102. First, it would make little sense for the Legislature to explicitly limit the application of section 1799.107's broad definition if it intended for section 1799.102 to be read in similarly expansive terms. Second, the Legislature demonstrated in section 1799.107 that it understands how to broadly define a term when it so desires—and its decision not to define "emergency care" in section 1799.102 in like fashion strongly implies it did not intend for the phrase to be so construed.[FN8] Third, if the Legislature understood the phrase "emergency care" to self-evidently include both medical and nonmedical care, as Torti suggests, there would have been little need to explicitly define an analogous term ("emergency services") in section 1799.107 to include both types of care.[FN9]

FN8. That the Legislature would have wanted to provide a broader immunity in section 1799.107 than in section 1799.102 is unsurprising—the former provision immunizes trained emergency rescue personnel while the latter applies to any person.

FN9. Torti warns that construing "emergency care" in section 1799.102 to mean only emergency medical care will circumscribe *section 1799.107's* immunity. Her concern is without basis. As she acknowledges, section 1799.107, subdivision (e) defines "emergency services" for purposes of that statute; thus, our construction of the phrase "emergency care" in section 1799.102 does not affect 1799.107 in any way.

***331** Accordingly, we conclude that, when construed in context and harmonized with related provisions relating to the same subject matter, section 1799.102 immunizes only those persons who render emergency *medical* care.

B. Additional Reasons to Prefer a Narrower Interpretation

We briefly address three additional reasons to

prefer plaintiff's narrower construction*****357** of section 1799.102 to the broader one urged by Torti.

1. Legislative History of Section 1799.102 Supports the Narrower Interpretation of the Provision

The legislative history of section 1799.102 and its predecessor, former section 1767 ****170** (Stats.1978, ch. 130, § 8, p. 345), supports the conclusion that the Legislature intended to immunize the provision of emergency *medical* care at the scene of *medical* emergencies.

Assembly Bill No. 1301 (1977–1978 Reg. Sess.) (Assembly Bill No. 1301), the legislation that added former section 1767, was intended to encourage citizen involvement in providing emergency assistance, such as cardiopulmonary resuscitation and first aid, to other citizens. (Assem. Com. on Health, Analysis of Assembly Bill No. 1301 (1977–1978 Reg. Sess.) May 2, 1977, p. 2.) To that end, as the Legislative Counsel's Digest notes, the bill "add[ed] provisions giving ... persons ... who render *emergency medical services*, immunity from liability [for] civil damages...." (Legis. Counsel's Dig., Assem. Bill No. 1301 (1977–1978 Reg. Sess.) 4 Stats.1978, Summary Dig., p. 35, italics added.) One such provision, former section 1767, provided that "In order to encourage *people to participate in emergency medical services training programs* and to *render emergency medical services* to others, no person who in good faith renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission...." [FN10] (Stats.1978, ch. 130, § 8, p. 345, italics added.) This legislative history supports our conclusion—that section 1799.102 was only intended to apply to emergency *medical* care.

FN10. The legislation enacting former section 1767, as originally proposed, would have also immunized a person who "transports an injured person for emergency medical treatment" (Assem. Bill No. 1301, as introduced Mar. 31, 1977, p. 6.) The language was deleted (Assem. Bill No. 1301, as amended June 10, 1977, p. 6), implying the Legislature decided against immunizing the type of assistance Torti says she provided, namely, removing plaintiff from the vehicle so she could receive medical treatment.

[12] ***332** First, according to the Legislative Counsel's digest, the Legislature's purpose in enacting the immunity provisions was to protect those "who render emergency medical services...." [FN11] (Legis. Counsel's Dig., Assem. Bill No. 1301 (1977–1978 Reg. Sess.) 4 Stats.1978, Summary Dig., p. 35.) Second, former section 1767 specifically provided that its purpose was to encourage people to participate "in emergency medical services training programs" and to "render emergency medical services to others...." (Stats.1978, ch. 130, § 8, p. 345.) Thus, it seems beyond dispute that, in passing Assembly Bill No. 1301, the Legislature intended for the term "emergency care" in former section 1767 to refer to emergency *medical* care.

FN11. Although the Legislative Counsel's summary digests are not binding *(State ex rel. Harris v. PricewaterhouseCoopers, LLP* (2006) 39 Cal.4th 1220, 1233, fn. 9, 48 Cal.Rptr.3d 144, 141 P.3d 256), they are entitled to great weight. *(California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17, 270 Cal.Rptr. 796, 793 P.2d 2.)

Legislative history suggests the term "emergency care" in section 1799.102 was intended to be interpreted in like fashion. The immunity set forth in section 1799.102 is essentially identical to the immunity in former section 1767, which implies the Legislature intended an identical scope. Additionally, while former section 1767's prefatory language explaining the immunity's purpose does not appear in section 1799.102, its absence does not suggest the *****358** Legislature intended to alter the immunity's original purpose. The language was merely moved to the previously discussed section 1797.5 (see *ante,* p.328, 86 Cal.Rptr.3d pp. 354–355, 197 P.3d pp. 167–168). Thus, the legislative history indicates that, as with former section 1767, the Legislature intended section 1799.102 to apply only to those who render emergency medical care.[FN12]

FN12. Indeed, one would expect that, had the Legislature intended to alter the scope of the immunity that previously existed in former section 1767, some mention of its intent would have made it into the legislative history. The absence of any such discussion suggests the Legislature did not so intend. (See *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 589,

48 Cal.Rptr.3d 340.)

2. Torti's Broad Interpretation Would Undermine Well-established Common Law Principles

Torti's expansive interpretation of section 1799.102 would undermine long-standing common law principles. As we previously noted, the general rule is that "one has no ****171** duty to come to the aid of another." (*Williams v. State of California, supra*, 34 Cal.3d at p. 23, 192 Cal.Rptr. 233, 664 P.2d 137.) As explained in the Restatement Second of Torts, "The origin of the rule lay in the early common law distinction between action and inaction, or 'misfeasance' and 'non-feasance.' " (Rest.2d Torts, § 314, com. c, p. 116.) Courts were more concerned with affirmative acts of misbehavior than they were with an individual "who merely did nothing, even though another might suffer serious harm because of his omission to act." (*Ibid.*)

[13] ***333** While there is no general duty to help, a good Samaritan who nonetheless "undertakes to come to the aid of another ... is under a duty to exercise due care in performance...." (*Williams v. State of California, supra*, 34 Cal.3d at p. 23, 192 Cal.Rptr. 233, 664 P.2d 137, citing Rest.2d Torts, § 323.) As we explained in *Artiglio v. Corning*, " '[i]t is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to a duty of acting carefully, if he acts at all.' (*Glanzer v. Shepard* (1922) 233 N.Y. 236, 135 N.E. 275.)" (*Artiglio v. Corning, supra*, 18 Cal.4th at p. 613, 76 Cal.Rptr.2d 479, 957 P.2d 1313.)

[14] The broad construction urged by Torti—that section 1799.102 immunizes *any* person who provides *any* emergency care at the scene of *any* emergency—would largely gut this well-established common law rule. As we recently noted, " '[w]e do not presume that the Legislature intends, when it enacts a statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied.' " (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1325, 57 Cal.Rptr.3d 644, 156 P.3d 1100.) Torti does not identify anything that would overcome the presumption that the Legislature did not intend to work such a radical departure.

3. Broad Interpretation Would Render Other "Good Samaritan" Statutes Unnecessary Surplusage

[15] As the Court of Appeal points out, Torti's sweeping construction of section 1799.102 would render other "good Samaritan" statutes superfluous. For example, Government Code section 50086 immunizes anyone with first aid training who is asked by authorities to assist in a search and rescue operation and who renders emergency services to a victim. The statute defines "emergency services" to include "first aid and medical services, rescue procedures, and transportation or other related activities." (*Ibid.*) It is difficult to see *****359** what conduct Government Code section 50086 immunizes that would not already be protected under section 1799.102 as it is interpreted by Torti. Any person providing "emergency services" under Government Code section 50086 would, according to Torti, also be rendering "emergency care" at the scene of an emergency under section 1799.102, thereby Government Code section 50086 would be unnecessary. Axioms of statutory interpretation counsel us to avoid such constructions. (*Engelmann v. State Bd. of Educ.* (1991) 2 Cal.App.4th 47, 56, 3 Cal.Rptr.2d 264.)

Torti's interpretation would similarly affect Harbors and Navigation Code section 656, subdivision (b). That provision immunizes any person who ***334** provides assistance "at the scene of a vessel collision, accident, or other casualty...." Immunity extends to "any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance." (*Ibid.*) Torti's broad construction of the terms "emergency care" and "scene of an emergency" in section 1799.102 would appear to swallow Harbors and Navigations Code section 656, while a narrower interpretation of section 1799.102 would avoid that problem.

III. DISPOSITION

In light of the foregoing reasons, we conclude that the Legislature intended for section 1799.102 to immunize from liability for civil damages only those persons who in good faith render emergency medical care at the scene of a medical emergency. We accordingly affirm the judgment of the Court of Appeal.

WE CONCUR: GEORGE, C.J., KENNARD and WERDEGAR, JJ.

****172** Concurring and Dissenting Opinion by BAXTER, J.

Health and Safety Code section 1799.102 [FN1] states that "[n]o person who in good faith, and not for compensation, renders *emergency care* at the *scene of*

an emergency shall be liable for any civil damages resulting from any act or omission." (Italics added.) Nothing in this clear statement limits or qualifies the *kind* of emergency aid—medical or nonmedical—that an uncompensated lay volunteer may provide without fear of legal reprisal from the person he or she tried to help.

FN1. All further unlabeled statutory references are to the Health and Safety Code.

A statute's plain language is a dispositive indicator of its meaning unless a literal reading would lead to absurd consequences the Legislature did not intend. (E.g., *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 888, 80 Cal.Rptr.3d 690, 188 P.3d 629; *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1131, 72 Cal.Rptr.3d 382, 176 P.3d 654; *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737, 21 Cal.Rptr.3d 676, 101 P.3d 563.) The plain meaning of section 1799.102 does not produce absurd results; on the contrary, it implements sound and logical public policy. The statute protects from the threat of civil litigation a layperson who, acting as a Good Samaritan, reasonably perceived that another human being needed immediate emergency assistance and intervened, despite possible personal risk and danger, to provide it. The purpose, of course, is to encourage persons not to pass by those in need of ***335** emergency help, but to show compassion and render the necessary aid. There is no reason why one kind of lay volunteer aid should be immune, while another is not.

*****360** Yet the majority imposes an arbitrary and unreasonable limitation on the protection this statute affords to Good Samaritans. The majority rewrites section 1799.102 to insert the word "medical" at two crucial points *where it does not appear*—once before the word "care" and again before the word "emergency." Thus, the majority concludes, the statute affords immunity only for emergency *medical* care rendered by an uncompensated layperson at the scene of a *medical* emergency.

Under the majority's distorted statutory reading, an uncompensated *lay volunteer*—whether or not trained in the rudiments of first aid—is immune for any incompetent and injurious *medical* assistance he or she renders to a person in need of medical treatment, but is fully exposed to civil liability for emergency *rescue* or *transportation* efforts intended to prevent injury to an endangered victim in the first instance, or to ensure that a victim in need of immediate medical treatment can receive it.

Thus, in the majority's view, a passerby who, at the risk of his or her own life, saves someone about to perish in a burning building can be sued for incidental injury caused in the rescue, but would be immune for harming the victim during the administration of cardiopulmonary resuscitation out on the sidewalk. A hiker can be sued if, far from other help, he or she causes a broken bone while lifting a fallen comrade up the face of a cliff to safety, but would be immune if, after waiting for another member of the party to effect the rescue, he or she set the broken bone incorrectly. One who dives into swirling waters to retrieve a drowning swimmer can be sued for incidental injury he or she causes while bringing the victim to shore, but is immune for harm he or she produces while thereafter trying to revive the victim.

Here, the result is that defendant Torti has no immunity for her bravery in pulling her injured friend from a crashed vehicle, even if she reasonably believed it might be about to explode, though she would have been immune if, after waiting for someone else to undertake the physical and legal risk of rescue, she then caused harm by attempting to administer to the victim's injuries at the roadside.

I cannot believe the Legislature intended results so illogical, and so at odds with the clear statutory language. I therefore respectfully dissent from the majority's interpretation of section 1799.102.

336** In a grudging understatement, the majority admits section 1799.102 is "certainly susceptible"*173** to the "plain language" interpretation that all unpaid volunteer emergency aid rendered in good faith at the scene of an emergency is immune. (Maj. opn., *ante*, 86 Cal.Rptr.3d at pp. 353–354. 197 P.3d at p. 167.) Yet the majority raises numerous objections against this construction, even though it conforms both to the statutory language and to sound reason. None of the majority's arguments is persuasive.

First, the majority points to the location of section 1799.102 in a statutory division (division 2.5) of the Health and Safety Code, entitled the Emergency Medical Services System and the Prehospital Emer-

gency Medical Care Personnel Act (§ 1797 et seq.; hereafter Act), that is primarily devoted to emergency medical services. This indicates, the majority concludes, that by using the term "emergency care" in section 1799.102, the Legislature meant only to immunize emergency medical care at the scene of a medical emergency.

*****361** However, it is well established that " '[t]itle or chapter headings are unofficial and do not alter the explicit scope, meaning, or intent of a statute.' " *(Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1119, 29 Cal.Rptr.3d 262, 112 P.3d 647.) The Health and Safety Code itself contains an express codification of this principle. (§ 6 ["Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code."].)

Indeed, contrary to the conclusion the majority seeks to draw, the very fact that the statutes in this division refer so frequently and specifically to "emergency *medical* services" (see, e.g., §§ 1797.1, 1797.5, 1797.72, 1798.175, 1799.100, 1799.106, 1799.110, 1799.111) [FN2] and "emergency *medical* care" (e.g., §§ 1797.274, 1799.110) (all italics added) suggests that omission of the word "medical" in the immunity provision at issue here was not inadvertent, but purposeful.

> FN2. Section 1797.72 defines " 'emergency *medical* services,' " for purposes of division 2.5 of the Health and Safety Code, to mean "the services utilized in responding to a *medical* emergency." (Italics added.) As the majority indicates, the Act does not define the distinct term "emergency care."

This omission makes eminent sense in context. While most of division 2.5 is concerned in detail with the organized provision of emergency *medical* services by public agencies, and by entities and individuals trained, certified, and employed in that particular field, section 1799.102 has both a broader and a narrower reach. It applies to *uncompensated* "emergency care" provided "at ***337** the scene of an emergency" by any "person," regardless of the individual's training in either emergency medical care or nonmedical emergency rescue procedures. (*Ibid.*) In this context, there is no reason to distinguish between medical and nonmedical assistance provided by the volunteer as the basis for immunity.

Moreover, despite its title, division 2.5, by its express terms, is not only concerned with the provision of emergency care of a strictly medical nature. As an apt case in point, section 1799.107 provides a qualified immunity from civil liability to public agencies and "emergency *rescue* personnel" for acts undertaken by such personnel, "within the scope of their employment to provide emergency services." (*Id.*, subd. (b), italics added.) Such " 'emergency services' " are defined to encompass acts *in addition to* the provision of emergency medical treatment, expressly including, "but ... not limited to ... *rescue procedures and transportation*, or other related activities necessary to insure the health *or safety* of a person in imminent peril." (*Id.*, subd. (e), italics added.)

The majority suggests, however, that by making section 1799.107's broad definition of "emergency services"—which clearly includes both medical and nonmedical emergency aid—applicable "[f]or purposes of this section" (*id.*, subd. (e)), the Legislature signaled its intent that a strictly medical definition of "emergency care" should apply elsewhere in the statutory scheme. Such is not the case.

The legislative history of section 1799.107 indicates a much narrower purpose, one not at all inconsistent with the plain meaning of section 1799.102. As originally adopted in 1980 (Stats.1980, ch. 1260, § 7, p. 4261 et ****174** seq.), the Act included section 1799.102 in its current form, but did not include section 1799.107. As to emergency personnel in particular, the only statutory tort immunities at that time were contained in *****362**Government Code section 850.4, which immunized public employees and entities for injury (other than motor vehicle injury) caused while fighting fires, or by the condition of fire protection equipment or facilities, and in Health and Safety Code section 1799.106 (part of the Act), which then, as now, provided a *qualified* immunity to law enforcement officers, firefighters, and certain certified emergency medical technicians for "emergency *medical* services" provided "at the scene of an emergency." (Italics added.)

Thereafter, a Court of Appeal decision held that Government Code section 850.4 provided an immunity only for firefighting activities, and thus did not ***338** immunize firefighters who had rescued a camper

pinned under a fallen tree. (*Lewis v. Mendocino Fire Protection Dist.* (1983) 142 Cal.App.3d 345, 346–347, 190 Cal.Rptr. 883.) In response, the Legislature adopted section 1799.107 (Stats.1984, ch. 275, § 1, pp. 1462–1463), specifying that all "emergency rescue personnel," including firefighters, have a qualified immunity for *both* first aid and medical service at the scene of an emergency *and* all other emergency rescue and transportation activities necessary to ensure the well-being of an endangered person.

Legislative history documents make clear that section 1799.107's purpose was simply to countermand the holding of *Lewis.* (See, e.g., Sen. Com. on Judiciary, analysis of Sen. Bill No. 1120 (1983–1984 Reg. Sess.) as amended July 1, 1983, pp. 2–3; Assem. Com. on Judiciary, analysis of Sen. Bill No. 1120 (1983–1984 Reg. Sess.) as amended Aug. 16, 1983, p. 1.) There is no indication of any legislative intent to imply that "emergency care," as used in section 1799.102, conferred immunity on uncompensated lay volunteers for a narrower range of emergency aid at the scene of an emergency. As indicated above, there would be no logical reason to do so.[FN3]

> FN3. The majority posits that it was logical for the Legislature to immunize a broader range of emergency aid in section 1799.107 than in section 1799.102, because the former statute governs trained emergency service personnel, while the latter applies to any person. But any suggestion that the Legislature intended greater immunity for trained personnel is belied by the fact that section 1799.102 offers *absolute* immunity for "good faith" "emergency care" rendered by any "person" at an emergency scene, while section 1799.107—similarly to several other immunity statutes covering trained emergency personnel—affords only a *qualified* immunity that does not extend to acts, medical or nonmedical, performed by emergency service personnel "in bad faith or a grossly negligent manner." (*Id.*, subd. (b); see also discussion, *post.*)

The majority stresses that a major purpose of the Act is to maximize the public availability of training in emergency medical services, and to encourage laypersons to obtain such training so they can assist others at the scene of a medical emergency. (§§ 1797.5, 1799.100.) This general policy suggests, in the majority's view, that the Legislature sought only to immunize such emergency medical assistance.

But the declared immunity is for "emergency care," not "emergency medical care," and it simply is not linked to the emergency assister's completion of emergency medical training. The immunity applies regardless of whether the uncompensated layperson rendering assistance has been trained in emergency first aid. Thus, there is no basis to infer that the Legislature intended a quid pro quo—a limited immunity in return for the person's completion of a specified kind of training program.

339** Indeed, any direct connection that previously existed in the legislative scheme among emergency medical training, emergency medical assistance, and the immunity**363** for "emergency care" has been severed. As the majority notes, former section 1767, the predecessor of section 1799.102, specifically provided that "[i]n order to encourage people to participate in emergency medical services training programs and to render emergency medical services to others, no person who in good faith render[ed] emergency care at the scene of an emergency" would be civilly liable for such actions undertaken in good faith. (Former § 1767, as added by Stats.1978, ch. 130, § 8, p. 345.)

****175** But as the majority must also acknowledge, the Legislature omitted the introductory "[i]n order to" phrase from section 1799.102, as adopted in 1980. The current immunity provision, unlike its predecessor, contains no language suggesting that the narrow purpose of the immunity is to encourage public participation in emergency medical service training, or to render emergency aid that is specifically medical in nature.[FN4]

> FN4. The majority suggests the language that appeared in former section 1767, but was deleted from section 1799.107, was simply "moved" to section 1797.5. (Maj. opn., *ante*, 86 Cal.Rptr.3d at p. 357–358, 197 P.3d at p. 170–171.) To be sure, section 1797.5 states a legislative intent to encourage the training of persons "to assist others at the scene of a medical emergency." What is critical, however, is that this policy is no longer stated as

> the purpose of the immunity granted in section 1799.102 to any "person" who renders "emergency care at the scene of an emergency."

The inference thus arises that no such link is now intended. We are left with the logic that medical or nonmedical emergency aid may be the priority need in a particular emergency situation. Activities of a nonmedical nature may be essential in order to save a victim from injuries that would require medical attention, or to place an injured victim in a position where medical care can be administered. All such actions thus deserve equal encouragement, and there is no reason to believe the Legislature thought otherwise when it adopted section 1799.102. If actual training in emergency medical services is not a prerequisite of immunity for uncompensated laypersons who provide emergency aid—and section 1799.102 makes clear that it is not—then there is no reason to construe the clear and unqualified immunity for "emergency care" to refer only to emergency medical care.

Next, the majority suggests that, for purposes of section 1799.102, the "scene of an emergency" at which the statutory immunity applies has a special and limited meaning. The majority points to the definitional portion of the Act, which includes a section, far removed from section 1799.102, defining an "emergency" as "a condition or situation in which an individual has a need for immediate medical attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency." (§ 1797.70.)

***340** But the Act makes clear that its definitions apply only "[u]nless the context otherwise requires." (§ 1797.50.) That exception must apply here, for the definition set forth in section 1797.70 makes little sense in the context of section 1799.102.

Section 1797.70's definition of "emergency" well suits those portions of the Act dealing with trained emergency medical personnel and the emergency medical services they furnish. However, if applied literally to section 1799.102, this definition would greatly undermine the incentive for uncompensated laypersons, as first responders, to proffer even emergency *medical* assistance. By its terms, section 1799.102 purports to encourage any "person," acting in "good faith," to provide necessary emergency help, and it does not require that the volunteer possess any particular*****364** training or expertise. Yet, under section 1797.70's definition of "emergency," section 1799.102 would afford immunity to a good faith lay volunteer only if his or her untrained perception of a need for immediate medical attention proved, in hindsight, to be correct, or if the volunteer waited for public agency representatives or emergency medical personnel to arrive and perceive such a need.

This cannot be what section 1799.102 intended. It seems more sensible to infer that, in section 1799.102, "emergency" has its normal, commonsense meaning as a sudden occurrence or unexpected situation that demands immediate action. (See, e.g., Merriam–Webster's Collegiate Dict. (11th ed.2004) p. 407, col. 1; Webster's 3d New Internat. Dict. (2002 ed.) p. 741, col.2; 5 Oxford English Dict. (2d ed.1989) p. 176, col. 1; American Heritage Dict. (2d college ed.1985) p. 448, col. 2.)

The majority notes that section 1799.102, which immunizes "emergency care at the scene of an emergency," does itself refer to "medical care" at one point, when it provides that "[t]he scene of an emergency shall not include emergency departments and other places where medical care is usually offered." From this, the majority infers that "emergency****176** care" and "medical care" are equivalent terms within the section, and that the "scene of an emergency" means the scene of a medical emergency *other than* an emergency medical care facility.

Again, however, the inference is not persuasive. Section 1799.102's obvious and logical purpose is to encourage volunteers, even if untrained, to render whatever immediate aid appears necessary at an emergency scene where no other help may be available. Consistent with that aim, the Legislature may well have seen no need to immunize a lay volunteer for emergency ***341** aid *of any kind* given at a place devoted to the provision of emergency medical care. An emergency occurring at such a location is most likely to be medical. Personnel trained to respond to such an emergency are readily at hand, and any response is best left to them. Indeed, the facility's staff is likely to be better trained and equipped than a lay volunteer to handle even the nonmedical aspects of an emergency occurring at such a scene.

The majority asserts that if section 1799.102 were

construed to provide immunity for both medical and nonmedical emergency care, the statute would render several other immunity provisions superfluous. But a close examination of the statutes the majority cites does not support this conclusion. Section 1799.107 affords "public entit[ies]" and "emergency rescue personnel" a *qualified* immunity when they provide "emergency services" (*id.*, subd. (b)), but the immunity does not apply when their actions were performed with gross negligence (*ibid.*). Thus, emergency rescue personnel, unlike the unpaid volunteers protected by section 1799.102, are held to minimal standards of care in keeping with their training and their compensated professional status.

The immunity in Government Code section 50086, also cited by the majority, extends *beyond* the scene of an emergency when the person immunized has first aid training and was asked to participate in a search and rescue operation. Similarly, the immunity provided by Harbors and Navigation Code section 656, subdivision (b) applies to the peculiar dangers of boating and marine navigation, but it is not strictly confined to "emergency" situations.

Finally, the majority insists we should not lightly imply a broad exception to the common law rule that one who voluntarily comes to the aid of another is liable for his or her negligence in doing so. I do not find this premise a persuasive reason for *****365** ignoring the plain language of section 1799.102.

At the outset, I dispute the majority's suggestion that an interpretation of section 1799.102 to include both medical and nonmedical "emergency care at the scene of an emergency" would "largely gut" the common law rule. (Maj. opn., *ante*, 86 Cal.Rptr.3d at p. 356, 197 P.3d at p. 171.) The rule applies, of course, in every case where one person decides to come to the aid of another, while section 1799.102 applies only to emergency aid at an emergency scene. Further, I submit, the emergency to which the statute applies must be one that *would be perceived as such by a reasonable person* who confronts the circumstances.

In such extreme situations, where prompt aid by a first responder may be the difference between life and death, the Legislature has every reason to be ***342** concerned that the harshness of the common law rule would discourage citizens from providing necessary emergency assistance to their neighbors. Thus, the Legislature could well conclude that it should immunize persons willing, under such stressful and potentially dangerous circumstances, to provide, without compensation, any form of help that might serve to alleviate the emergency.

As I have indicated, the majority's interpretation creates a *less rational* exception to the common law rule, because it would immunize lay volunteers only for the very kinds of help—i.e., *medical* assistance in *medical* emergencies—that most clearly require special training and expertise such persons are unlikely to possess. I am not convinced the Legislature had such an aim, contrary to the plain language it used in section 1799.102.

I therefore conclude that this statute protects from civil liability any person who, without compensation, renders emergency assistance of any kind during a situation he or she reasonably perceives to be an emergency. Accordingly, I believe, defendant Torti could not be denied summary judgment under section 1799.102 simply for the reason that any ****177** emergency assistance she rendered to plaintiff Van Horn at the scene of the accident was not "medical" in nature.

On the other hand, I am not persuaded that defendant Torti has satisfied all the prerequisites for immunity under section 1799.102. The statute requires that the assistance must have been given "at the scene of an emergency." (*Ibid.*) Counsel for plaintiffs suggested at oral argument that there were factual disputes raising questions about whether defendant Torti actually and reasonably believed there was an "emergency" situation that required her to extricate plaintiff Van Horn from the accident vehicle before qualified emergency rescue personnel arrived at the scene to undertake that task. I agree with this assessment.

As the majority recounts, "Torti testified at deposition that she saw smoke and liquid coming from [the] vehicle, and she removed plaintiff [Van Horn] from the vehicle because she feared [it] would catch fire or 'blow up.' ... Others testified, on the other hand, that there was no smoke or any other indications that the vehicle might explode and that Torti put [Van Horn] down immediately next to the car." (Maj. opn., *ante*, 86 Cal.Rptr.3d at p. 352, 197 P.3d at p. 171.) These ambiguities raise, in my view, triable issues

whether Torti rendered, or actually and reasonably believed she was rendering, "*emergency* care at the scene of an *emergency*." (§ 1799.102, italics added.)

343** Accordingly, I conclude defendant Torti was not entitled to summary judgment**366** under the auspices of section 1799.102.[FN5] On that basis, I, like the majority, would affirm the judgment of the Court of Appeal.

FN5. The majority asserts there are *no* triable issues against Torti as to whether she acted at "the scene of an emergency," because there is no dispute that Van Horn, having been injured in the accident, was in immediate need of medical attention. This conclusion, however, flows from the majority's erroneous premise that "the scene of an emergency," for purposes of section 1799.102, is any situation, but only a situation, in which someone has the need for immediate *medical* help. If, as I believe, the purpose of section 1799.102 is to immunize generally a good faith "emergency" response to an "emergency" situation, then "the scene of an emergency" must be construed as a situation calling for the particular kind of emergency response that was provided.

WE CONCUR: CHIN and CORRIGAN, JJ.

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(Cite as: 97 Cal.App.3d Supp. 37)

C

THE PEOPLE, Plaintiff and Respondent,
v.
ROSE MARY TUFTS et al., Defendants and Appellants.

Crim. A. No. 16027.

Appellate Department, Superior Court, Los Angeles County, California.
Aug. 23, 1979.

SUMMARY

Two women were convicted in a trial by jury of violations of sections of a county-health code pertaining to the proper maintenance of dwelling units. Municipal court for the Los Angeles Judicial District of Los Angeles County, No. 698925, Brian D. Crahan, Judge.

The appellate department of the superior court reversed as to one of the counts against one of the defendants and the judgments were otherwise affirmed. The court held that a section requiring that dwelling units contain lavatories and bathtubs or showers, that toilet rooms, bath and shower rooms, and utility rooms be adequately lighted and ventilated to the outside atmosphere, and that such rooms and the fixtures and equipment therein be maintained in a state of good repair and free from dirt, filth and corrosion, was too vague to be enforced against defendant landlord, who was charged with failing, refusing and neglecting to maintain a toilet fixture in good repair. The court pointed out that either a landlord or a tenant may have the responsibility for maintenance and cleanliness of toilet facilities, and it held that it could not be ascertained which of those parties is criminally liable under the ordinance. All other contentions of vagueness and overbreadth of the sections involved were rejected. The court held that a section prohibiting the maintenance of property in such condition as to permit breeding or harborage of rodents or vermin was not preempted by Health & Saf. Code, §§ 1800-1813, which establish an obligation on persons possessing places infested with rodents to tray to exterminate them, make a violation of that requirement a misdemeanor, and provide for health officers to inspect infested places and to do the exterminating at public expense, charging the property owner therefor, if necessary. The court pointed out that the thrust of the local regulation is in the field of prevention of infestation while that of the state provisions is extermination. The court further held that the evidence was sufficient to sustain the convictions and rejected a contention of error in the trial court's failure to order a hearing on the competency of one of the defendants to stand trial. In conclusion, the court rejected that defendant's assertion of error in the trial court's failure to allow her trial counsel to tell the jurors that he was an appointed counsel. (Opinion by Cole, P. J., with Dowds and Saeta, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Health and Sanitation § 2--Regulations and Ordinances-- Constitutionality--Certainty.

The words “state of good repair” as used in a county ordinance providing that fixtures and equipment in toilet rooms shall be maintained in a state of good repair and free from dirt, filth, and corrosion, were not so uncertain as to render the ordinance unconstitutionally vague with respect to a defendant charged with failing, refusing and neglecting to maintain a toilet fixture in good repair. The complaint specifically alleged that the toilet drain was obstructed and the toilet was inoperative, and common sense is sufficient to tell anyone that a toilet which does not work is not in a state of good repair.

(2) Health and Sanitation § 2--Regulations and Ordinances-- Constitutionality--Overbreadth.

A section of a county ordinance providing that fixtures and equipment in toilet rooms shall be maintained in a state of good repair and free from dirt, filth, and corrosion could not be said to be un-

constitutionally overbroad, on the theory that at one time or another toilets break down or stop functioning, as applied to a landlord charged with failing, refusing and neglecting to maintain a toilet fixture in a state of good repair. Properly construed with related sections, the law referred to conditions menacing public health, and the record showed that the condition on which the charge was based was not a mere transitory plumbing ailment. Moreover, defendant had no standing to raise an issue of overbreadth as to the "filth and corrosion" language of the ordinance; she was not charged under that language.

(3a, 3b) Health and Sanitation § 2--Regulations and Ordinances-- Constitutionality--Identification of Persons Criminally Liable.

A county ordinance requiring that dwelling units contain lavatories and bathtubs or showers, that toilet rooms, bath and shower rooms, and utility rooms be adequately lighted and ventilated to the outside atmosphere, and that such rooms and fixtures and equipment be maintained in a state of good repair and free from dirt, filth, and corrosion, was too vague to be enforced against a landlord who was charged with failing, refusing, and neglecting to maintain a toilet fixture in good repair. Either a landlord or a tenant may have the responsibility for maintenance and cleanliness of toilet facilities and it could not be ascertained which of them is criminally liable under the ordinance.

(4) Criminal Law § 6--Prohibition by Law--Sufficiency and Validity of Enactment--Certainty.

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. A statute must be definite enough to provide a standard of conduct for those whose activities are proscribed as well as a standard for the ascertainment of guilt by the courts called upon to apply it. However, a statute will be upheld if its terms may be made reasonably certain by reference to the common law or to its legislative history or purpose. A statute will likewise be upheld, despite the fact that the acts it prohibits are defined in vague terms, if it requires an adequately defined specific intent. A court, however, may not create a standard, and a specific intent defined in the same vague terms as those defining the prohibited acts does not make a statute acceptably definite.

(5) Criminal Law § 6--Prohibition by Law--Sufficiency and Validity of Enactment--Certainty.

The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited.

(6) Health and Sanitation § 2--Regulations and Ordinances-- Constitutionality--Certainty.

The word"harborage" as used in a county ordinance prohibiting the maintenance of property in such condition as to permit breeding or harborage of rodents or vermin is not too vague a word to establish criminal liability. It is a common enough English language phone not to be misleading, especially when read in context.

(7) Health and Sanitation § 2--Regulations and Ordinances-- Constitutionality--Overbreadth.

A county ordinance prohibiting the maintenance of property in such condition as to permit breeding or harborage of rodents or vermin could not be said to be overbroad in that all premises will permit the breeding or harborage therein of rodents. A fair reading of the ordinance shows that it relates to the prevention of conditions conducive to the presence of rodents, which is a valid statutory objective, aimed at protecting public health.

(8) Health and Sanitation § 2--Regulations and Ordinances-- Constitutionality--Certainty.

A county ordinance prohibiting the maintenance of property in such condition as to permit breeding or harborage of rodents or vermin could not be attacked on the ground of vagueness on the basis that it had no guidelines for determining when there is a likelihood of rodent infestation. Fairly

read, the balance of the section allows a health officer to notify a violator of the condition, and to indicate the measures required to correct it.

(9) Criminal Law § 6--Prohibition by Law--Sufficiency and Validity of Enactment--Certainty.

A criminal statute which is so indefinite, vague and uncertain that the definition of the crime or standard of conduct cannot be ascertained therefrom is unconstitutional and void. However a statute will not be held void for uncertainty if any reasonable and practical construction can be given to its language. Nor does the act that its meaning is difficult to ascertain or susceptible of different interpretations render the statute void. All presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively and unmistakably appears.

(10) Criminal Law § 6--Prohibition by Law--Sufficiency and Validity of Enactment--Certainty.

In determining whether a penal statute is sufficiently explicit to inform those who are subject to it what is required of them, the courts must endeavor, if possible, to view the statute from the standpoint of the reasonable man who might be subject to its terms. It is not necessary that a statute furnish detailed plans and specifications of the act or conduct prohibited. The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding.

(11) Health and Sanitation § 2--Regulations and Ordinances--State Preemption.

A county ordinance prohibiting the maintenance of property in such condition as to permit breeding or harborage of rodents or vermin was not preempted by Health & Saf. Code, §§ 1800-1813, which establish an obligation on persons possessing places infested with rodents to try to exterminate them, make a violation of that requirement a misdemeanor, and provide for health officers to inspect infested places and to do the exterminating at public expense, charging the property owner therefor, if necessary. The thrust of the local regulation is in the field of prevention of infestation while that of the state provisions is extermination. The state law does not fully and completely cover the field; there is no paramount state concern against local action aimed at preventing rodents from breeding; and the local ordinance has no adverse effect on transient citizens.

[See **Cal.Jur.3d**, Health and Sanitation, § 2; **Am.Jur.2d**, Health, § 5.]

(12) Health and Sanitation § 1--Prosecutions--Instructions.

In a prosecution of a landlord for violating a county ordinance by maintaining a condition which permitted the breeding “and” harborage of rodents, it was not error to instruct the jury in the disjunctive, referring to maintaining a condition that would permit the breeding “or” harborage of rodents. When a statute lists several acts in the disjunctive, any one of which constitutes an offense, the complaint, in alleging more than one of such acts, should do so in the conjunctive to avoid uncertainty. Merely because the complaint is phrased in the conjunctive, however does not prevent a trier of fact from convicting a defendant if the evidence proves only one of the alleged acts.

(13) Health and Sanitation § 1--Prosecutions--Due Process.

In a prosecution for violation of a county ordinance prohibiting the maintenance of property in such condition as “will” permit breeding or harborage or rodents, defendant was not denied due process by the fact the complaint used the word “did” with reference to the breeding and harborage. There was a clear reference to the ordinance in the complaint, and the use of the word “did” instead of the word “will” at most amounted to charging a greater offense than the lesser one which was proved.

(14) Health and Sanitation § 1--Prosecutions--Sufficiency of Evidence.

In a prosecution for violation of a county ordinance prohibiting the maintenance of property in

such condition as will permit breeding or harborage of rodents, the evidence was sufficient to show that defendant occupied or maintained or caused or permitted another person to occupy or maintain the premises described in the complaint, where witnesses testified that they rented rooms there from defendant, on behalf of a codefendant, and that they gave the rent checks, payable to the codefendant, to defendant, and where ownership of the premises was shown by a quitclaim deed to defendant as well her name on the tax roll.

(15) Health and Sanitation § 1--Prosecutions--Sufficiency of Evidence.

In a prosecution of a landlord for violating sections of a county public health code with respect to improper maintenance of premises, the evidence was sufficient to support defendant's conviction, where health inspectors testified, as experts, to the existence of conditions which in their opinion violated the sections involved, and where defendant had alleged under oath in an unlawful detainer action that she was the owner of the property, though she had later retreated to the position of a lessee with an option to purchase. In either event her control of the premises was adequately established so as to subject her to liability.

(16) Criminal Law § 211--Trial--Proceedings on Issue of Insanity--At Time of Trial--Right to Hearing on Competency.

In a prosecution of a landlord for violating sections of a county public health code with respect to improper maintenance of premises, the trial court did not err in failing to order a hearing on defendant's competency to stand trial, where, though the issue of competency was raised by defense counsel at arraignment and the court took no action, and was again raised a month later and rejected by the court, no question of competency was raised at the time of trial some six months later. Under Pen. Code, § 1368, subd. (b), providing for a hearing on competency at counsel's suggestion, a defendant is entitled to a hearing if the trial judge has a doubt as to competence and is not entitled to such a hearing merely on the statement of defense counsel; there must be substantial evidence of doubt as to competence before a defendant is entitled to a hearing.

(17) Criminal Law § 42--Rights of Accused--Fair Trial--Right to Inform Jury That Counsel Is Appointed.

The record in a prosecution of a landlord for violating sections of a county public health code with respect to improper maintenance of premises did not establish that defendant was denied a fair trial in that her trial counsel was not allowed to tell the jurors that he was an appointed counsel, where, though the settled statement on appeal contained a hearsay statement to the effect that the jurors told trial counsel that they had convicted defendant because if she could afford private counsel she could afford to clean up her property, the settled statement also showed that the matter was never brought to the trial court's attention and that the court had no knowledge of the subject.

COUNSEL

Charlotte Low and Robert B. Le Corvec for Defendants and Appellants.

Burt Pines, City Attorney, Rand Schrader and Lewis N. Unger, Deputy City Attorneys, for Plaintiff and Respondent.

COLE, P. J.

Appellant Wheeler was convicted of three counts of violating sections of the Los Angeles County Public Health Code (which code was after incorporated into the City of Los Angeles Municipal Code) and appellant Tufts was convicted of one such count. We affirm the convictions, except that of appellant Wheeler as to one of the charges, describing the evidence and section so far as is necessary to answer the contentions made.

I

(1)One of the counts involving appellant Wheeler alleged violation of section 819 of the public health code. The complaint alleges that she

failed, refused and neglected to maintain toilet fixture in a state of good repair, at 7046 Firmament Avenue, specifically alleging that the toilet drain was obstructed and the toilet was inoperative. The code section itself provides that fixtures and equipment in toilet rooms hall be ***44** maintained in a state of good repair and free from dirt, filth, and corrosion."

Wheeler argues that this provision is unconstitutionally vague, claiming that "state of good repair" is uncertain. We disagree, especially in the context pleaded here that the toilet was inoperative. Common sense is sufficient to tell anyone that a toilet which does not work is not in a state of good repair. Persons of ordinary intelligence should be able to understand this. We have rejected a similar challenge. (*People v. Balmer* (1961) 196 Cal.App.2d Supp. 874, 879-880 [17 Cal.Rptr. 612].) There we said "'The words "good repair" have a well known d definite meaning ... They sufficiently inform the ordinary owner that his property must be fit for the habitation of those who would ordinarily use his dwelling.'" (*Id.*, at p. 880.)

(2)Appellant Wheeler next argues that the section is unconstitutionally overbroad, apparently on the basis that at one time or another toilets break down, or stop functioning. While it is true that unreasonable restrictions on one's use his property might violate substantive due process, we agree with the People's argument that, properly construed with other sections of the county public health code, the section relates to conditions where public health is menaced. The record here shows that the toilet condition was not a mere transitory plumbing ailment. A health inspector testified that after finding the inoperative toilet he sent a notice to Wheeler regarding this and other violations, and indicating the required remedies. He returned to the premises and found no change in the condition and then set a hearing with notice to Wheeler, which she failed to attend. No due process violation occurred, because there is no unreasonable restriction on appellant's use of her rental property. To the extent the overbreadth argument goes further and relates to the "filth and corrosion" language of the ordinance, Wheeler has no standing to raise the issue. She was not convicted on count of any "filth and corrosion." This is not a First Amendment case. (See 5 Witkin, Summary of Cal. Law (8th ed. 1974) pp. 3282-3284.)

(3a)We are left to consider, with respect to this charge, one additional ground with respect to section 819. That section reads in full as follows: " Sec. 819. Toilet Rooms and Plumbing Fixtures. (8588, eff. 5-8-64) Every dwelling unit shall contain a lavatory and bathtub or shower. All lavatories, bathtubs, and showers of dwellings, house courts, hotels, motels, and apartment houses, shall be provided with hot and cold running water under pressure. All toilet rooms, bath and shower rooms, ***45** and utility rooms shall be adequately lighted and ventilated to the outside atmosphere. All such rooms and the fixtures and equipment therein shall be maintained in a state of good repair and free from dirt, filth, and corrosion. "At oral argument we asked counsel to file further letter briefs discussing who is criminally liable for violation of this section, a matter not originally raid by the parties. In reply, the People contend that reading the public health code as a whole, section 819 was intended to apply to both lessors and lessees dwelling units. They cite section 817 of the code which states that with a certain exception " it shall be unlawful for any person to occupy or to cause or permit another person to occupy any dwelling unit ..." which does not have at least one water closet. The People also refer to section 825 which prescribes certain conditions for sleeping quarters and states "No person shall occupy, rent, or lease, suffer or permit another person to use ..." quarters not in compliance. Finally, reference is made by the People to section 827 which requires the consent of the owner or occupants for inspections in the nighttime hours. From these sections, and invoking the familiar principle that all of the parts of a statute should be construed together, the People argue that the scope of the ordinance is to prevent anyone from living or

permitting another to live in premises that will endanger the health of the occupant. The People also state that if section 819 is ambiguous as to persons liable under its provisions the vagueness would not apply to lessors but only to tenants. The requirement of the section that toilet rooms be provided with hot and cold water and concerning lighting a ventilation, the People say, is a type of requirement that would be placed up a landlord, while only the final requirement of the section relating to maintaining the premises in a state of good repair and free from dirt, filth and corrosion is "under the dual realistic control" of both tenant and landlord.

One preliminary problem with the People's argument is that it can be argued with some conviction that the express description in sections 817, 825 and 827 of the persons liable for violating them is in stark contrast with the silence on this subject in section 819. Another problem is that the argument that only the last portion of the section is ambiguous strikes at the very part at issue here. If, as seems logical, a tenant is not likely to be in a position to see that each dwelling unit contains a lavatory and bathtub or shower, and if a tenant is not expected to be the one to provide the required hot and cold running water and to see that rooms are adequately lighted and ventilated to the outside atmosphere, then the only portion of section 819 applicable to tenants is the part which concern us in this action. ***46**

(4)The basic principles which control our decision are not in dispute. They are summarized in *People v. McCaughan* (1957) 49 Cal.2d 409, 414 [317 P.2d 974] as follows: "'[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of e process of law.' (*Connally v. General Const. Co.*, 269 U.S. 385, 391 [46 S.Ct. 126 70 L.Ed. 322]; *Lanzetta v. New Jersey*, 306 U.S. 451, 453 [59 S.Ct. 618, 83 L.Ed 888]; *In re Peppers*, 189 Cal. 682, 685-687 [209 P. 896].) A statute must be definite enough to provide a standard of conduct for those whose activities are proscribed as well as standard for the ascertainment of guilt by the courts called upon to apply it. (*Winters v. New York*, 333 U.S. 507, 515-516 [68 S.Ct. 665, 92 L.Ed. 840]; *In re Peppers, supra.*, 189 Cal. at 685-687; *People v. Building Maintenance etc. Assn.*, 41 Cal.2d 719, 725 [264 P.2d 31]; *People v. Saad*, 105 Cal.App.2d Supp. 851, 854 [234 P.2d 785].) A statute will be upheld if its terms may be made reasonably certain by reference to the common law (see *Connally v. General Const. Co., supra.*, 269 U.S. at 391; *Lorenson v. Superior Court*, 35 Cal.2d 49, 60 [216 P.2d 859]) or to its legislative history or purpose. (See *Connally v. General Const. Co., supra.*, 269 U.S. at 391-392; *People v. King*, 115 Cal.App.2d Supp. 875, 878 [252 P.2d 78].) A statute will likewise be upheld, despite the fact that the acts it prohibits are defined in vague terms, if requires an adequately defined specific intent. (See *People v. Building Maintenance etc. Assn., supra.*, 41 Cal.2d at 724 and cases cited.) A court, however, may not create a standard (*Lanzetta v. New Jersey, supra.*, 306 U.S. 451; *Connally v. General Const. Co., supra.*, 269 U.S. 385), and a specific intent defined in the same vague terms as those fining the prohibited acts does not make a statute acceptably definite."

(5)And, more specifically pointed to the problem under discussion, is this language in *United State v. Cardiff* (1952) 344 U.S. 174, 176 [97 L.Ed. 200, 202, 73 S.Ct. 189] where the Supreme Court said "The vice of vagueness in criminal statutes is the treachery they conceal either in determining *what persons are included* or what acts are prohibited." (Italics supplied.)

(3b)The People's argument, to which we have alluded, points up the problem with respect to section 819. It would not seem unreasonable that a landlord be held responsible, at the time a tenant takes over property under a lease, for seeing that the toilet facilities are in good repair and free from dirt, filth and corrosion. Yet we do not know, with respect to the present charge, whether it relates to

conditions existing at the start of a lease term or not. While it is also not unreasonable that a landlord be ***47** held similarly responsible for such maintenance and cleanliness later on during a lease term, it is equally likely that the tenant may have assumed these responsibilities. (See and compare with each other Civ. Code, §§ 1941, 41.1, subds. (b) and (c), and 1942.1.) California statutes recognize that landlord and tenant may agree with each other on these matters. Thus the pertinent responsibility may be on one or the other. It would be most unreasonable to charge a landlord with the failure to maintain a toilet fixture in good order when the tenant has undertaken in writing, as he may under section 1942.1 of the Civ Code to maintain it, or when the tenant has the legal obligation to repair it when his own conduct has caused it to become inoperable. (See Civ. Code, § 1929.)

We hold that section 819 of the Public Health Code of the County of Los Angeles, as adopted by Ordinance No. 127507 of the City of Los Angeles is too vague to be enforced against appellant Wheeler, since it cannot be ascertained who is liable under the section.

II

Each appellant was convicted (Wheeler as to the Firmament property and Tufts as to 6901 Peach Avenue) of violating section 628 the public health code. That section states: "No person shall occupy, maintain, or cause or permit another person to occupy or maintain any building, lot, premise, vehicle, or any other place, in such condition of construction or maintenance as will permit the breeding or harborage therein or thereon of rodents, fleas, bedbugs, cockroaches, lice, mosquitoes, or any other vermin. No person may permit an accumulation of any material that may serve as a rodent harborage unless such material be elevated not less than eighteen (18) inches above the ground or floor with a clear intervening space thereunder. Whenever the Health Officer finds any building, lot, premise, vehicle, or other place to be infested with vermin or rodents, or to be in such an insanitary condition as to require fumigation or renovation, the Health Officer may notify the owner, his agent, the tent, or possessor thereof in writing specifying the manner in which the provisions hereof are being violated and indicating the specific measures that shall be taken by the recipient of such notice to abate said conditions."

We reject the various challenges made to these convictions, as follows:

(6)First, each appellant argues that "harborage" is too vague a word to establish criminal liability. We think it is a common enough English language phrase, especially when read in context, not to be misleading. ***48**

(7)Second, Wheeler says the section is or broad because all premises "will permit the breeding or harborage therein of rodents." A fair reading of the ordinance shows that it relates to the prevention of conditions conducive to the presence of rodents. That is a valid statutory objective, aimed at protecting public health.

(8)Third, Tufts asserts that the section is vague, in that it has no guidelines for determining when there is a likelihood of rodent infestation. Fairly read, the balance of the section allows health officer to notify a violator of the condition, and to indicate the measures required to correct it. As noted above, a health inspector testified that is was done in the instant case, but that no steps were taken to remedy the condition. Reading the section to support its constitutionality, as we must if possible, we believe that it meets the test of sufficient explicitness set forth in *Smith v. Peterson* (1955) 131 Cal.App.2d 241, 245-246 [280 P.2d 522, 49 A.L.R.2d 1194]. (9) There the court said: "It is well settled that a criminal statute which is so indefinite, vague and uncertain that the definition of the crime or standard of conduct cannot be ascertained therefrom, is unconstitutional and void. However, there is a uniformity of opinion among the authorities that a statute will not be held void for uncertainty if any reasonable and practical construction can be

given to its language."

"Nor does the fact that its meaning is difficult to ascertain or susceptible of different interpretations render the statute void. All presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity.

Statutes must be upheld unless their unconstitutionality clearly, positively and unmistakably appears. Doubts as to its construction will not justify us in disregarding it.

(10)"In determining whether a penal statute is sufficiently explicit to inform those who are subject to it what is required of them the courts mu endeavor, if possible, to view the statute from the standpoint of the reasonable man who might be subject to its terms. It is not required that a statute, to be valid, have that degree of exactness which inheres in a mathematical theorem. It is not necessary that a statute furnish detailed plans and specifications of the acts or conduct prohibited. The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and ***49** understanding (*Lockheed Aircraft Corp. v. Superior Court*, 28 Cal.2d 481 [171 P.2d 21, 166 A.L.R. 701]; *Collins v. Riley*, 24 Cal.2d 912 [152 P.2d 169]; *Pacific Coast Dairy v. Police Court*, 214 Cal. 668 [8 P.2d 140, 80 A.L.R. 1217]; *People v. Ring*, 26 Cal.App.2d Supp. 768 [70 P.2d 281]; *Smulson v. Board of Dental Examiners*, 47 Cal.App.2d 584 [118 Pd 483]; *Lorenson v. Superior Court*, 35 Cal.2d 49 [216 P.2d 859]; *Sproles v. Binford*, 286 U.S. 374 [52 S.Ct. 581, 76 L.Ed. 1167].)"

(11)Fourth, Tufts points to sections 1800 through 813 of the Health and Safety Code, and claims that they preempt local regulation of rodent control. They do not. The sections establish an obligation on persons possessing places infested with rodents to try to exterminate them (§ 1803) and make a violation of this requirement a misdemeanor (§ 1813). Others of the sections provide for health officers to inspect infested places and to do the exterminating at public expense, charging the property owner therefor, if necessary. The thrust of the local regulations is in the field of prevention of infestation while that of the state provisions is extermination. State law preempts local law in one of three situations (which are elaborated, for example, in *Yuen v. Municipal Court* (1975) 52 Cal.App.3d 351, 354 [125 Cal.Rptr. 87], cited to us by the People). Without prolonging this opinion, it is manifest that the local health code involve here in no way has been preempted-none of the three tests is met: The state law does not fully and completely cover the field; clearly there is no paramount state concern against local action aimed at preventing rodents from breeding;nd clearly the local ordinance has no adverse effect on transient citizens.

(12)Fifth, Wheeler objects to People's instruction No. 2 because the complaint pleaded a violation of section 628 in the conjunctive (referring to maintaining a condition "as did permit the breeding *and* harborage" of rodents-our italics), while the instruction was in the disjunctive, (referring to maintaining a condition "as will permit the breeding *or* harborage" of rodents-again, our italics). Appellant's argument is that this difference is a material variance, leading to a conviction of an uncharged offense. Appellant is wrong. "... When statute ... lists several acts in the disjunctive, any one of which constitutes an offense, the complaint, in alleging more than one of such acts, should do do in the conjunctive to avoid uncertainty ... Merely because the complaint is phrased in the conjunctive, however, does not prevent a trier of fact from convicting a defendant if the evidence proves only one of the alleged acts ..." (*In re Bushman* (1970) 1 Cal.3d 767, 775 [83 Cal.Rptr. 375, 463 P.2d 727].) ***50**

(13)Sixth, Tufts points to the difference between the charging language " *did*permit the breeding and harborage" and the language of section 628 which states will permit." She elevates this difference to a denial of due process, asserting that

she could have produced a different defense if the complaint had read differently. The evidence showed no actual presence of rodents on the premises, there being only a showing that at one time rodent droppings had been found. Thus appellant says she did not receive notice of the charge. Appellant focuses on the other wrong language. The offense is the maintaining of a *condition* conducive to breeding and harborage of rodents. The actual presence of rats, of course, would rather conclusively establish the existence of the condition. But their absence does not negate the fact that the condition permits-in other words makes possible-the breeding and harborage of rodents. In effect, the use of the word "did," instead of the word "will," at most amounted to charging a greater offense than the lesser one which was proved. There was a clear reference to section 628 in the complaint. No error resulted.

III

(14)Appellant Tufts argues tt there was not enough evidence presented to show that she occupied or maintained or caused or permitted another person to occupy or maintain the Peach Avenue premises. Given the testimony of MacCauley that he rented a room there from Tufts, on behalf of Wheeler, and that he gave the rent checks, payable to Wheeler, to Tufts, similar testimony from witness Gladden and the existence of a quitclaim deed to Tufts as well as her name on the tax roll as being the owner of the property, the contention is frivolous.

IV

The third count of which Wheeler stan convicted relates to public health code section 605. The section requires an owner, agent or manager of premises to maintain them in a clean, sanitary condition, free from accumulations of garbage, rubbish refuse and other wastes at all times, except as provided by the provisions of the ordinance or other law. The argument that the term "agent" and the term "accumulations" are vague is not worth discussing. The contention that overbreadth exists because every time one leaves garbage cans out he accumulates garbage, rubbish and refuse is without merit. The argument ignores the facts that this is not what Wheeler was charged with doing, and it overlooks the fact that other provisions of the ordinance allow-indeed require-the keeping of ***51** garbage in receptacles (§ 601) and the depositing and keeping of rubbish in adequate containers for up to 15 da (§ 603).

V

(15)As to all of the counts involving her, Wheeler says the evidence was not sufficient. We need not recite it. We note only that health inspectors testified, as experts, to the existence of conditions which in their opinion violated the sections involved. As to her ownership of the property, she alleged under oath in an unlawful detainer action that she was the owner, later retreating to the position of a lessee with an option to purchase. In either event her control of the Firmament premises was adequately established, so as to subject her to liability.

VI

(16)The next contention relates to Wheeler's competency to stand trial. The record shows that at arraignment in June 1977 trial counsel "raised the issue of incompetency" but the court took no steps. In July 1977 "defense counsel again raised the issue of incompetency which was rejected by the Court." The trial was not until January 1978. No question of competency was then presented. We could dispose of the argument that under Penal Code section 1368, subdivision (b) the court should have ordered a hearing held on the issue with the simple observation that appellant has not presented us with a record sufficient to show that the court did not meet its obligations. We need not do so, however. Meeting the issue head on it is enough to observe that *People v. Hays* (1976) 54 Cal.App.3d 755, 759 [126 Cal.Rptr. 770], binds us. Penal Code section 1368, subdivision (b), states that if counsel informs the court he believes that the defendant is or may be incompetent, the court shall order that the question

is to be determined in hearing held pursuant to Penal Code sections 1368.1 and 1369. In *Hays*, the court interpreted this provision to mean that a defendant is entitled to a hearing if the trial judge has a doubt as to the defendant's competence and that defendant is not entitled to such a hearing merely upon the statement of defense counsel. The court held that there still must be substantial evidence of doubt as to competence before a defendant is entitled to a hearing.

We recognize that Wheeler argues that this case should not be followed. We are obliged to follow. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [20 Cal.Rptr. 321 369 P.2d 937].) Accordingly, appellant Wheeler's additional argument that she was denied the right to ***52** appear in person at the trial because s was incompetent and her waiver of appearance on the opening day accordingly was meaningless, is based on an assumption not supported by the record.

VII

(17)The last contention on appeal is Wheeler's argument that she was denied a fair trial because her trial counsel was not allowed to tell the jurors that he was an appointed counsel. The statement on appeal has the hearsay statement in it that trial counsel has informed appellate counsel that “the jurors allegedly told trial counsel” that they convicted Wheeler because if she could afford private counsel she could afford to clean up her property.

The argument asks us to reverse a conviction because of what jurors allegedly told trial counsel; the settled statement shows that this matter was never brought to the trial court's attention a that it has no knowledge of the subject. Thus, not only is this an impermissible attempt to impeach a verdict (Evid. Code, § 1150, subd. (a)), the record is inadequate in any event.

The late filed motion to add a declaration of Clarence MacCauley to the record on appeal is denied.

The judgment of conviction of appellant Wheeler as to count 1 is reversed. The judgments are otherwise affirmed.

Dowds, J., and Saeta, J., concurred.

A petition for a rehearing was denied August 31, 1979. ***53**

Cal.Super.App.
People v. Tufts
97 Cal.App.3d Supp. 37, 159 Cal.Rptr. 163

END OF DOCUMENT

5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699, 74 Ed. Law Rep. 165
(Cite as: 5 Cal.App.4th 1513)

H FN*CALIFORNIA TEACHERS ASSOCIATION et al., Plaintiffs and Respondents,
v.
THOMAS W. HAYES, as Director of the Department of Finance, etc., Defendant and Respondent, BILL HONIG, as Superintendent of Public Instruction, etc., Defendant and Appellant; CALIFORNIA CHILDREN'S LOBBY et al., Real Parties in Interest and Appellants.

No. C009444.

Court of Appeal, Third District, California.
Apr 30, 1992.

FN* Reporter's Note: This case was previously entitled "California Teachers Association v. Huff."

SUMMARY

A teacher's association and three of its officers filed a petition for a writ of mandate against the Superintendent of Public Instruction and other state officials to prohibit the inclusion of funding for the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the education funding guarantee of Prop. 98 (Classroom Instructional Improvement and Accountability Act). The trial court concluded that Prop. 98 was not intrinsically ambiguous, and that its plain meaning required that only appropriations allocated to, and administered by, school districts satisfied its minimum funding requirement. Accordingly, the trial court issued a writ of mandate prohibiting defendants from including any funds allocated to or administered by any entity or agency, other than a school district as defined in Ed. Code, § 41302.5, within the Prop. 98 education funding guaranties. The trial court also declared that Ed. Code, §§ 8203.5, subd. (c), 41202, subd. (f), which include funding for the Child Care and Development Services Act within the Prop. 98 guaranties, were unconstitutional. (Superior Court of Sacramento County, No. 363630, Michael T. Garcia, Judge.)

The Court of Appeal reversed. The court held that education and operation of the public schools are matters of statewide rather than local or municipal concern. Likewise, the court held that school moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein. Although the inclusion of funding for the act deprived school districts of absolute control over the funds the state is required to devote to education under Prop. 98, the court held that the measure did not expressly restrict the Legislature's plenary authority for education in the state, nor did it grant to school districts exclusive control over education funds. Accordingly, it held that the Legislature's inclusion of funding for the Child Care and Development Services Act within the Prop. 98 education funding guaranty was not facially unconstitutional. (Opinion by Sparks, Acting P. J., with Marler and Nicholson, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Universities and Colleges § 2--Organization and Affiliation--University of California.

The University of California is a public trust that finds its roots in the Constitution of 1849. The University of California has full powers of organization and government, subject only to limited legislative control. As such, it is not part of the public school system, and is subject to entirely different legal standards.

(2) Schools § 4--School Districts--Control and Operation--State Interest.

Although it is the legislative policy to strengthen and encourage local responsibility for control of public education through local school districts (Ed. Code, § 14000), education and operation of the public schools remain matters of statewide rather than local or municipal concern. Thus, local school districts are deemed agencies of the state for the administration of the school system, they are not a distinct and independent body politic, and they are not free and independent of legislative control.

(3) Schools § 4--School Districts--Control and Operation--Legislature's Powers.

The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject

only to constitutional constraints. Consequently, regulation of the education system by the Legislature is controlling over any inconsistent local attempts at regulation or administration of the schools. No one may obtain rights vested against state control by virtue of local provisions, ordinances or regulations. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. Indeed, the state is the beneficial owner of school property and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein. Thus, the Legislature can transfer property and apportion debts between school districts as it sees fit.

(4) Schools § 11--School Funds--Determination of Educational Purpose-- Legislative Discretion.

In including the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the funding guarantee of Prop. 98 (Classroom Instructional Improvement and Accountability Act), the Legislature was not arbitrary and unreasonable in its determination that the act advanced the purposes of public education. Although the Legislature is given broad authority over education, it cannot divert education funds for other purposes. However, education is a broad and comprehensive matter, and the state Constitution places a broad meaning upon education. Moreover, the Legislature is given broad discretion in determining the types of programs and services which further the purposes of education.

(5) Constitutional Law § 23--Constitutionality of Legislation--Raising Question of Constitutionality--Burden of Proof--Facial Challenge to Statute.

When a challenge is made to the facial validity of a statute, a reviewing court's task is to determine whether the statute can constitutionally be applied. To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute. Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.
[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 58.]
(6) Constitutional Law § 27--Constitutionality of Legislation--Rules of Interpretation--Purpose, Wisdom, and Motives of Legislature.

The authority to make policy is vested in the Legislature, and neither arguments as to the wisdom of an enactment, nor questions as to the motivation of the Legislature, can serve to invalidate particular legislation. Where a petitioner makes a facial challenge to an enactment, a reviewing court's role is limited to determining whether the Legislature's choice is constitutionally prohibited.

(7a, 7b) Schools § 11--School Funds--Proposition 98 Funding Guarantee-- Legislative Control.

The Legislature's inclusion of funding for the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the Prop. 98 (Classroom Instructional Improvement and Accountability Act) education funding guarantee was not facially unconstitutional. Although the inclusion of funding for the act deprived school districts of absolute control over the funds the state is required to devote to education under Prop. 98, the measure did not expressly restrict the Legislature's plenary authority for education in the state, nor did it grant to school districts exclusive control over education funds. The Constitution makes education and the operation of the public schools a matter of statewide rather than local or municipal concern. School districts do not have a proprietary interest in moneys which are apportioned to them. Accordingly, even though child care and development programs are not included within the definition of school districts, legislative programs which advance the educational mission of school districts and community college districts may constitutionally be included within the funding guaranty of Prop. 98.

(8) Constitutional Law § 39--Distribution of Governmental Powers--Between Branches of Government--Legislative Power.

Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Accordingly, the entire lawmaking authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. In addition, all intendments favor the exercise of the Legislature's plenary authority. If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and

limitations imposed by the Constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used.

(9) Constitutional Law § 10--Construction of Constitutions--Initiative Amendments--Conformation of Parts.

In an action challenging the propriety of including the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the funding guarantee of Prop. 98 (Classroom Instructional Improvement and Accountability Act), construction of the constitutional provisions added by Prop. 98 had to be considered in light of all other relevant provisions of the Constitution. These provisions include those that contain, define, and limit the status of school districts and their relationship to the state. An initiative amendment to the Constitution must be interpreted in harmony with the other provisions of the organic law of this state of which it has become a part. To construe it otherwise would be to break down and destroy the barriers and limitations that the Constitution, read as a whole, has cast about legislation, both state and local.
[See **Cal.Jur.3d (Rev),** Constitutional Law, § 28.]
COUNSEL

Joseph R. Symkowick, Roger D. Wolfertz and Allan H. Keown for Defendant and Appellant.

James R. Wheaton, Gray, Cary, Ames & Frye and Paul J. Dostart as Amici Curiae on behalf of Defendant and Appellant.

Robert C. Fellmeth, Carl K. Oshiro and Terry A. Coble for Real Parties in Interest and Appellants.

Barbara C. Carlson, Abby J. Cohen and Carol S. Stevensen as Amici Curiae on behalf of Real Parties in Interest and Appellants.

Remcho, Johansen & Purcell, Joseph Remcho, Barbara A. Brenner and Julie M. Randolph for Plaintiffs and Respondents.

Kronick, Moskovitz, Tiedemann & Girard and Rochelle B. Schermer as Amici Curiae on behalf of Plaintiffs and Respondents.

Daniel E. Lungren, Attorney General, N. Eugene Hill, Assistant Attorney General, Cathy Christian and Marsha A. Bedwell, Deputy Attorneys General, for Defendant and Respondent.

SPARKS, Acting P. J.

At the November 1988 General Election, the electorate adopted Proposition 98, an initiative measure entitled "The Classroom Instructional Improvement and Accountability Act" [FN1] In general, Proposition 98 seeks to improve public education in California by establishing a minimum funding guarantee for public schools and by changing the way our state government treats its excess revenues. As the Legislative Analyst noted in her analysis of the initiative, Proposition 98 establishes a minimum level of funding for public schools and community colleges; requires the state to spend any excess revenues, up to a specified maximum, for public schools and community colleges; requires the Legislature to establish a state reserve fund; and requires the school districts to prepare and distribute "School ***1518** Accountability Report Cards" each year. (Ballot Pamp. analysis of Prop. 98 by Legislative Analyst as presented to the voters, Gen. Elec. (Nov. 8, 1988), p. 78, some capitalization and all paragraphing omitted.)

> FN1 Proposition 98 (Stats. 1988, p. A-264 et seq.) added two sections to the California Constitution, amended two other constitutional provisions and added six sections to the Education Code. It added section 5.5 to article XIII B of the California Constitution, amended section 2 of article XIII B, amended section 8 of article XVI, added section 8.5 to article XVI, and added sections 33126, 35256, 41300.1, 14020.1, 14022 and 41302.5 to the Education Code.
>
> The full text of Proposition 98 is set out in the appendix to this opinion.

To these ends, Proposition 98 sets a minimum funding level for "the monies to be applied by the state for the support of school districts and community college districts. ..." (Cal. Const., art. XVI, § 8, subd. (b).) It is around this phrase that the present controversy swirls. At issue in this case is the validity of the Legislature's decision to include funding for the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the educational funding guarantees of Proposition 98. This decision was implemented by the enactment of Education Code section 41202,

subdivision (f), which declares that " 'monies to be applied by the state for the support of school districts and community college districts,' as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act ...."

The California Teachers Association and three of its officers filed a petition for writ of mandate against the Director of Finance, the state Treasurer and the state Superintendent of Public Instruction to prohibit the inclusion of funding for the Child Care and Development Services Act within the Proposition 98 education funding guarantee. By stipulation, the California Children's Lobby, the Professional Association of Childhood Educators, the California Assocation for the Education of Young Children, and the Child Development Administrators Assocation, intervened in the action as real parties in interest. The trial court issued a writ of mandate prohibiting defendants from including any funds allocated to or administered by any entity or agency other than a school district as defined in Education Code section 41302.5, within the Proposition 98 educational funding guarantees, and declaring that Education Code sections 8203.5, subdivision (c), and 41202, subdivision (f), which include funding for the Child Care and Development Services Act within the Proposition 98 guarantees, are unconstitutional. Bill Honig, the State Superintendent of Public Instruction, and the real parties in interest appeal. We shall reverse.

I Procedural Background

Proposition 98 provides for the improvement of public education in two basic ways. The first, which is not implicated in this appeal, involves the allocation of state revenues in excess of the state appropriations limitation to elementary, high school and community college districts on a per-enrollment ***1519** basis for use solely for the purposes of instructional improvement and accountability. (Cal. Const., art. XIII B, § 2; art. XVI, § 8.5.) The second way, and the one involved here, establishes a minimum guaranteed state education funding level for "the moneys to be applied by the State for the support of school districts and community college districts ...." (Cal. Const., art. XVI, § 8, subd. (b).) [FN2]

FN2 Under Proposition 98 the minimum funding level is set as the greater of (1) the same percentage of general fund revenues as was set aside for school districts and community colleges in the 1986-1987 school year, or (2) the amount necessary to ensure that total state and local allocations be equal to the prior year's allocations, adjusted for cost of living and enrollment changes. (Cal. Const., art. XVI, § 8, subd. (b).) A third test was added at the June 1990 Primary Election by the passage of Proposition III. That measure is not involved here.

After its passage, the Legislature acted to implement Proposition 98. (Ed. Code, § 41200 et seq. [unless otherwise specified, all further statutory references will be to the Education Code].) One aspect of the Legislature's implementation is at issue in this appeal. As we have noted, in section 41202, subdivision (f), the Legislature provided, among other things: " 'State General Fund revenues appropriated for school districts and community college districts, respectively' and 'monies to be applied by the state for the support of school districts and community college districts,' as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 ...."

In order to ensure that the Child Care and Development Services Act serves the purposes of public education, the Legislature enacted section 8203.5, which provides: "(a) The Superintendent of Public Instruction shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract. [¶] (b) The Superintendent of Public Instruction shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the State Department of Education shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under Section 8262 shall be responsible for

maintaining developmental profiles upon entry through exit from a child developmental program. [¶] Notwithstanding any other provision of law, 'moneys to be applied by the [s]tate,' as used in subdivision (b) of ***1520** Section 8 of Article XVI of the California Constitution, includes funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6, whether or not those funds are allocated to school districts, as defined in Section 41302.5, or community college districts. [¶] (d) This section is not subject to Part 34 (commencing with Section 62000)." [FN3] ***1521**

FN3 In an uncodified provision the Legislature explained its purpose for including child care and development funds in the Proposition 98 funding guarantee: "The Legislature finds and declares as follows: [¶] (a) Since 1932, early childhood education and child development programs have been operated as part of the school programs that are conducted under the authority of the Superintendent of Public Instruction. In the 1988-89 fiscal year, 110,000 children in California were served in the state program of early childhood education and child development administered by the Superintendent of Public Instruction, as set forth in Chapter 2 (commencing with section 8200) of Part 6 of the Education Code. [¶] (b) Participation and enrollment in an early childhood education or child development program provides an opportunity for many children to hear their first English words (one in three speaks another language), to be introduced to the idea of numbers, to develop basic language concepts, to learn how to get along with other children and adults, and to begin to develop a positive self-image. [¶] (c) The Legislature has stated its intent that early childhood education and child development programs be a 'concomitant part of the educational system' by providing young children an equal opportunity for later school success. Those programs are considered by the general public to be an integral and essential part of the state's public education system. [¶] (d) Early childhood education programs for chldren of low-income families have been shown to increase high school graduation rates and college entry rates, to reduce the need for special education and grade level retention, and to reduce high school dropout rates. [¶] (e) In the state's early childhood education and development programs, each child is to receive an education program which is appropriate to his or her developmental, cultural, and linguistic needs. Each child is to receive a developmental profile, updated at regular intervals, which will be passed on to his or her elementary school. [¶] (f) In view of the unique function of early childhood education and child development programs, in supporting school districts by directly preparing children for participation in the public schools and by assisting those children in resolving special school-related problems, these programs constitute an essential and integral component of the overall system to carry out the mission of the public schools. Accordingly, in order to fully implement subdivision (b) of Section 8 of Article XVI of the California Constitution, which requires, in its introductory paragraph, a minimum level of funding 'for the support of' school districts, as defined, and community college districts, it is necessary to include, within the calculation of that funding, the funding provided by the Legislature for all early childhood education and development programs. Moreover, in accordance with the educational role of those programs, it is the responsibility of the Superintendent of Public Instruction to continue to ensure that all contracts for early childhood education and child develpment programs provide support to the public school system of this state through the delivery of appropriate educational services to the children served by the program. In addition, Section 8262.1 of the Education Code, as added by this act [in fact there is no section 8262.1], constitutes a necessary statutory implementation of that determination, which is consistent with the legislative history of the statutes that provide for the operation of early childhood education and child development programs. [¶] (g) For the period from the 1986-87 fiscal year to the present, the state's early childhood education and development programs have received funding adjustments for cost-of-living and enrollment increases that have been lower, overall, than the comparable adjustments for base revenue limits for school dis-

> tricts. [¶] However, it is the intent of the Legislature that the inclusion of early childhood education and child development programs within the calculation of the state's education funding obligation pursuant to Proposition 98 is not to result in requiring in that calculation the use of the lower level of funding received by these programs in the 1986- 87 fiscal year." (Stats. 1989, ch. 1394, § 1.)

The Child Care and Development Services Act is contained in sections 8200 through 8498. It is a comprehensive statewide master plan for child care and development services for children to age 14 and their parents. (§ 8201, subd. (a).) Among other things it includes such items as resource and referral programs (§§ 8210-8215), campus child care and development programs (§ 8225), migrant child care and development programs (§§ 8230-8233), preschool programs (§ 8235), general child care and development programs (§§ 8240-8242), and programs for children with special needs (§§ 8250-8252). Services under this statutory scheme may be provided directly by school districts or local education agencies or by contracts through such agencies, or services may be provided by private parties contracting with the state Department of Education. (See rep., Child Development, Program Facts, prepared by the Dept. of Ed., Child Development Div., Field Services Branch (1989) pp. 12-13.) Programs under the Child Care and Development Services Act are under the general supervision of the Superintendent of Public Instruction. (§ 8203.) In some instances federal funding is available and the Legislature has declared that federal reimbursement shall be claimed where available and that the Department of Education is designated as "the single state agency" responsible for the programs under federal requirements. (§§ 8205-8207.)

Plaintiffs filed this action to prohibit the inclusion of funding for the Child Care and Development Services Act within the Proposition 98 education funding guarantee. [FN4] They maintain that funds which are not allocated directly to and administered by school districts cannot be included within the provisions of Proposition 98. [FN5] The trial court agreed with plaintiffs. It concluded that Proposition 98 is not intrinsically ambiguous and that its ***1522** plain meaning requires that only appropriations allocated to, and administered by, school districts satisfy its minimum funding requirement. As the trial court saw it, "[t]he phrase 'monies to be applied by the state for the support of school districts,' taken as a whole, clearly refers to financial allocations for the financial support of school districts, and not the financial support of private child care and development programs which incidentallly benefit school districts." Judgment was entered accordingly and this appeal followed.

> FN4 Plaintiffs also contested the inclusion of funding for certain other types of programs within the Proposition 98 guarantee. In his answer defendant Bill Honig, as Superintendent of Public Instruction, conceded that plaintiffs are correct with respect to these other programs and no other party contests this concession. This appeal concerns only funding for the Child Care and Development Services Act.

> FN5 The Director of the Department of Finance, filed an answer in which he agreed with plaintiffs and he is a respondent in this appeal. The former state Treasurer successfully demurred on the ground that his function in this regard is purely ministerial and the Treasurer is not a party on appeal. Defendant Honig contested the petition with respect to child care and development programs and he is an appellant herein. As we have noted, the parties stipulated that the Children's Lobby et alia be permitted to intervene as real parties in interest and they are also appellants in this appeal. Amici curiae briefs in support of appellants have been filed by the state Legislature, the California Congress of Parents, Teachers and Students, Inc., and certain child advocacy and care provider organizations.

II Historical Background

There can be no doubt that education has historically been accorded an ascendant position in this state. Indeed, at the very start, article IX of our 1849 Constitution created the office of Superintendent of Public Instruction; required the Legislature to encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement; required the Legislature to establish a system of common schools; and established a fund for the support of the common schools. (See Stats. 1849, p. 32.)

As this recitation will demonstrate, the preeminent position of education in California has been a constant in a world of governmental flux. Section 1 of article IX of the Constitution now provides, as it has since 1879: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." Section 5 of article IX presently mandates, as it has since 1879: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." Since 1933, our Constitution has provided that from state revenues there shall first be set apart the moneys to be applied by the state for the support of the public school system and institutions of higher education. (Cal. Const., art. XVI, § 8, subd. (a); see former art. XIII, § 15, Stats. 1935, p. IXIX.)

Section 6 of article IX of our Constitution establishes a State School Fund. That section provides, in relevant part: "The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next ***1523** preceding fiscal year. [¶] The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400)."

Article IX, section 6, of the Constitution also provides in part: "The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and other agencies authorized to maintain them. (1)**(See fn. 6.)** No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System." [FN6]

> FN6 The University of California is a public trust which finds its roots in the Constitution of 1849. (See Stats. 1849, p. 32; and see Cal. Const., art. IX, § 9.) The University of California has "full powers of organization and government" subject only to limited legislative control. (*Ibid.*) As such, it is not part of the Public School System and is subject to entirely different legal standards. The University of California is beyond the scope of the issues presented in this appeal.

For the administration of this public school system, the Constitution creates the office of Superintendent of Public Education and establishes a State Board of Education. (Cal. Const., art. IX, §§ 2, 2.1.) It provides for county boards of education and superintendents of schools. (Cal. Const., art. IX, §§ 3-3.3.) It permits city charters to provide for the election or appointment of boards of education. (Cal. Const., art. IX, § 16.) Section 14 of article IX provides: "The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts. [¶] The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

(2) It has been and continues to be the legislative policy of this state to strengthen and encourage local responsibility for control of public education ***1524** through local school districts. (§ 14000.) [FN7] Nevertheless, education and the operation of the public schools remain matters of statewide rather than local or municipal concern. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 179 [302 P.2d 574]; *Esberg v. Badaracco* (1927) 202 Cal. 110, 115- 116 [259 P. 730]; *Kennedy v. Miller* (1893) 97 Cal. 429, 431 [32 P. 558];

Whisman v. San Francisco Unified Sch. Dist. (1978) 86 Cal.App.3d 782, 789 [150 Cal.Rptr. 548].) Hence, local school districts are deemed to be agencies of the state for the administration of the school system and have been described as quasi-municipal corporations. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 181; *Pass School Dist. v. Hollywood Dist.* (1909) 156 Cal. 416, 418 [105 P. 122]; *Hughes v. Ewing* (1892) 93 Cal. 414, 417; *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 421 [324 P.2d 328].) Thus, a school district is not a distinct and independent body politic and is not free and independent of legislative control. (*Allen v. Board of Trustees* (1910) 157 Cal. 720, 725-726 [109 P. 486].)

FN7 Although state funding for education is designed to enhance local responsibility for education, the Legislature has found it undesirable to yield total monetary authority to school districts. In the Statutes of 1981, chapter 100, section 1, at page 653, it is said: "The Legislature finds and declares that as a matter of policy the setting aside of categorical support for school districts is necessary to ensure the adequate funding for programs such as the provision of textbooks, pupil transportation, teacher retirement, special education for individuals with exceptional needs, and for educationally disadvantaged youths. The Legislature supports this policy of appropriating separately funds for special purposes because it provides funds for the intended purposes of the programs and because the substantial variation from district to district in terms of financial need for the programs cannot be accommodated adequately in general school support formulas. Although this act does not appropriate funds for inflation for categorical programs, it is the intent of the Legislature that, because categorical programs provide essential educational services, these programs should receive general inflation funds as provided in the Budget Act for other state programs." Our Supreme Court has determined that under our Constitution education is uniquely important and cannot be left totally under local monetary control. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 614 [96 Cal.Rptr. 601, 487 P.2d 1241].)

(3) The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 181; *Pass School Dist. v. Hollywood Dist., supra*, 156 Cal. at p. 419; *San Carlos Sch. Dist. v. State Bd. of Education* (1968) 258 Cal.App.2d 317, 324 [65 Cal.Rptr. 711]; *Town of Atherton v. Superior Court, supra*, 159 Cal.App.2d 417, 421.) Indeed, it is said that the Legislature cannot delegate ultimate responsibility over education to other public or private entities. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 181; *Piper v. Big Pine School* Dist. (1924) 193 Cal. 664, 669 [226 P. 926].) Consequently, regulation of the education system by the Legislature will be held to be controlling over any inconsistent local attempts at regulation or administration of the schools. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 181; ***1525***Esberg v. Badaracco, supra*, 202 Cal. at pp. 115- 116; *Whisman v. San Francisco Unified Sch. Dist., supra*, 86 Cal.App.3d at p. 789.) And no one may obtain rights vested against state control by virtue of local provisions, ordinances or regulations. (*Whisman v. San Francisco Unified Sch. Dist., supra*, 86 Cal.App.3d at p. 789.)

The Legislature, in the exercise of its sweeping authority over education and the school system, has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Allen v. Board of Trustees, supra*, 157 Cal. at pp. 725-726; *Pass School Dist. v. Hollywood Dist., supra*, 156 Cal. at p. 418; *Hughes v. Ewing, supra*, 93 Cal. at p. 417.) Indeed, the state is the beneficial owner of school property and local districts hold title as trustee for the state. (*Hall v. City of Taft, supra*, 47 Cal.2d at pp. 181-182; *Chico Unified Sch. Dist. v. Board of Supervisors* (1970) 3 Cal.App.3d 852, 855 [84 Cal.Rptr. 198]; *Town of Atherton v. Superior Court, supra*, 159 Cal.App.2d at p. 421.) "School moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein." (*Butler v. Compton Junior College Dist.* (1947) 77 Cal.App.2d 719, 729 [176 P.2d 417]; see also *Gridley School District v. Stout* (1901) 134 Cal. 592, 593 [66 P. 785].) It follows that the Legislature can transfer property and apportion debts between school districts as it sees fit. (*Pass School Dist. v. Hollywood Dist., supra*, 156 Cal. at pp. 418-419; *Hughes v. Ewing, supra*, 93 Cal. at p. 417; *San Carlos Sch. Dist. v. State Bd. of Education, supra*, 258 Cal.App.2d at p. 324.)

While few will deny the critical importance of education, the needs of the public education system often conflict with other desires of the electorate, especially that of minimizing the tax burden imposed upon the populace. Fewer still would deny that financing the public educational system in this state is Byzantine in its intricacy and complexity. Public education financing involves two basic, broad, and interrelated problems: public school resource production (how the funds are raised), and public school resource deployment (how the funds are spent). (See Andrews, *Serrano II: Equal Access to School Resources and Fiscal Neutrality-A View From Washington State* (1977) 4 Hast. Const.L.Q. 425, 429, fn. 18 [hereafter *Equal Access to School Resources*].) Public school financing is complicated by such matters as whether revenue should be raised through state or local taxation or some combination of both (see *Serrano v. Priest* (1976) 18 Cal.3d 728, 747 [135 Cal.Rptr. 345, 557 P.2d 929] [hereafter *Serrano II*]; and see *Equal Access to School Resources, supra,* 4 Hast. Const.L.Q. at pp. 445-446); disparate tax base to units of average daily attendance (ADA) ratios among various districts (see *Serrano v. Priest, supra,* 5 Cal.3d at p. 592 [hereafter *Serrano I*]); the willingness (or ability) of local voters to authorize increased taxes or expenditures for education (see *Serrano II, supra,* 18 Cal.3d at p. 769); the ***1526** availability of federal funding for educational programs and the sometimes inflexible qualification criteria for such funding (see Stats. 1981, ch. 100, § 1.3, pp. 653-654); the differing needs of schools and their students (see Stats. 1981, ch. 100, § 1, p. 653); and the difficulty of determining what types of services or programs should or should not be included within the educational budget (see *Equal Access to School Resources, supra,* 4 Hast. Const.L.Q. at pp. 441-442.) Although these matters are by no means exhaustive, they do illustrate the inherent complexity involved in developing an adequate formula for school support.

In the past 20 years state funding for education has been significantly influenced by several legal and political events. The changes began in 1971, a time when the major source of school revenue was derived from local real property taxes. (*Serrano I, supra,* 5 Cal.3d at p. 592.) The state then contributed aid to school districts in two forms: "basic state aid," which was a flat financial grant per pupil per year; and "equalization aid," which was based upon the assessed valuation of property per pupil within the district. (*Id.* at p. 593.) This educational status quo was challenged in *Serrano I,* a class action in which the plaintiffs maintained that the public school financing system created disparate educational opportunities based upon wealth. It was asserted that due to a substantial dependence upon local property taxes children from wealthy districts received greater educational opportunities than children from poorer districts. [FN8] In 1971, the California Supreme Court held that wealth is a suspect classification and that education constitutes a fundamental interest and thus the state plan should be subjected to strict scrutiny under equal protection principles. (*Id.* at pp. 614-615.) The high court concluded that an educational system which produces disparities of opportunity based upon district wealth would fail to meet constitutional requirements and the action was remanded for trial of the factual allegations of the complaint. (*Id.* at p. 619.)

> FN8 It has been pointed out that the wealth of a school district will not necessarily reflect the wealth of families it serves. For example, a district might have a high assessed valuation to ADA ratio because it includes areas which are heavily developed for commercial or industrial purposes, yet serve families who live near such areas because they cannot afford to move to more affluent areas. Conversely, a suburban or rural district may serve relatively affluent students yet lack a high assessed valuation to ADA ratio because it lacks any commercially developed areas within its boundaries. In *Serrano I* the Court disregarded this possibility because it was reviewing a demurrer to a complaint which alleged that there was a correlation between the wealth of a district and its residents and for the more basic reason that it did not believe that disparities in educational opportunities could be permitted simply because they reflected the wealth of the district rather than the individual. (*Id.* at pp. 600-601.)

After *Serrano I,* the Legislature modified the formula for state education aid in an effort to eliminate its objectionable features. The parties stipulated that the modified formula should be considered at trial. (***1527***Serrano II, supra,* 18 Cal.3d at pp. 736-737.) Also during the pendency of the trial court proceedings, the United States Supreme Court rendered its

opinion in *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278]. There, the Texas public school financing system, which was substantially similar to ours, was upheld by the federal high court. The court concluded that the Texas system did not result in a suspect classification based upon wealth and did not affect a fundamental interest and thus needed only to meet the "rational relationship" test under equal protection principles. (*Id.* at pp. 33-34, 48-55, 61-62 [36 L.Ed.2d at pp. 42-43, 51-56, 59-60].) Thereafter the *Serrano* trial court held that California's public education financing scheme violated independent state equal protection guarantees. In *Serrano II*, the California Supreme Court affirmed the judgment of the trial court which gave the state six years for bringing the public school financing system into constitutional compliance. (18 Cal.3d at pp. 749, 777.)

Meanwhile, at the June 1978 Primary Election the voters enacted Proposition 13, which added article XIII A to the California Constitution. That measure changed California's real property tax system from a current value system to an acquisition value system and limited the tax rates which could be imposed upon real property. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 220, 238 [149 Cal.Rptr. 239, 583 P.2d 1281].) In an effort to mitigate the effects of article XIII A upon local governments and schools, the Legislature enacted a bailout bill to distribute surplus state funds to local agencies. (See *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 297 [152 Cal.Rptr. 903, 591 P.2d 1].) Article XIII A also forced the state to assume a greater responsibility for financing the public school system. (§ 41060.)

In the November 1979 Special Statewide Election the voters enacted Proposition 4 to add article XIII B to the California Constitution. Article XIII B imposes limitations upon the power of all California governmental entities to appropriate funds for expenditures. (Cal. Const., art. XIII B, §§ 1, 8, subds. (a), (b).) Revenues received by any governmental entity in excess of its appropriations limit must be returned by a revision of tax rates or fee schedules within the next two fiscal years. (Cal. Const., art. XIII B, § 2.) The measure also provides that whenever the state mandates a new program or higher level of service upon local governments, it must provide a subvention of funds to reimburse local government for the added costs. (Cal. Const., art. XIII B, § 6.)

It can be seen that as a result of the events of the 1970's the already difficult task of financing public education was made even more formidable. ***1528** As a result of article XIII A, the state was forced to assume a greater share of the responsibility for funding education. Any formula for funding education would be required to meet equal protection principles as set forth in the *Serrano* decisions. And as a result of article XIII B, there was certain to be greater competition for the state revenues within the appropriations limit. It was against this background that the voters enacted Proposition 98 at the November 1988 General Election.

III Matters Not in Issue

The question presented in this appeal can best be addressed when it is narrowed to its appropriate scope by elimination of what is not involved. We are not here concerned with whether the Child Care and Development Services Act in fact completely entails an educationally related program. (4) While the Legislature is given broad authority over education, it cannot divert education funds for other purposes. (*Crosby v. Lyon* (1869) 37 Cal. 242, 245.) But plaintiffs did not and cannot reasonably contend that the child care program under attack does not at least in part serve an educational purpose. Education is a broad and comprehensive matter. (*Board of Trustees v. County of Santa Clara* (1978) 86 Cal.App.3d 79, 84 [150 Cal.Rptr. 109].) It "[c]omprehends not merely the instruction received at school or college, but the whole course of training; moral, religious, vocational, intellectual, and physical. Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all. [It includes the] [a]cquisition of all knowledge tending to train and develop the individual." (Black's Law Dict. (5th ed. 1979) p. 461, col. 2.) Our Constitution places a similarly broad meaning upon education when it requires the Legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Cal. Const., art. IX, § 1.) [FN9] Moreover, under our Constitution the Legislature is given broad discretion in determining the types of programs and services which further the purposes of education. (*Veterans' Welfare Board v. Riley* (1922) 189 Cal. 159, 164-166 [208 P. 678, 22 A.L.R. 1531]; *University of*

So. California v. Robbins (1934) 1 Cal.App.2d 523, 528 [37 P.2d 163].) It cannot be said that the Legislature has been arbitrary and unreasonable in its determination that the Child Care and Development Services Act furthers the purposes of public education.

> FN9 While "education" is sufficiently broad to include religious training, specific provisions of the state and federal Constitutions exclude religious training from governmental education programs. (U.S. Const., Amend. I; Cal. Const., art. I, § 4, art. IX, § 8.)

We are not here concerned with the question whether the Legislature's implementation of Proposition 98 is partially invalid or invalid as applied. ***1529** Plaintiffs claim that the inclusion of funding for the Child Care and Development Services Act within the Proposition 98 funding requirement is invalid in toto and on its face. They argue that Proposition 98 funds must be transferred to school districts which then have total discretion to determine how those funds should be spent. They did not present evidence or argument to establish that portions of the Child Care and Development Act lack a sufficient nexus to education to be included in education funding or that the manner in which it is carried out by the Superintendent of Public Instruction does not support and further the purpose of education. (5) "Because this is a challenge to the facial validity of the [the statute], our task is to determine whether the statute can constitutionally be applied. 'To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute. ... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.' " (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267 [5 Cal.Rptr.2d 545, 825 P.2d 438], italics in original.)

We are not here concerned with the advisability or wisdom of the Legislature's decision. [FN10] (6) Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation. (*City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 913 [120 Cal.Rptr. 707, 534 P.2d 403]; *County of Los Angeles v. Superior Court* (1975) 13 Cal.3d 721, 727 [119 Cal.Rptr. 631, 532 P.2d 495]; *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 869 [76 Cal.Rptr. 642, 452 P.2d 930]; *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal.2d 349, 359 [55 Cal.Rptr. 23, 420 P.2d 735].) As a court of review our role is limited to determining whether the Legislature's choice is constitutionally prohibited. (*Ibid.*)

> FN10 For this reason we deny the request of amici curiae that we take judicial notice of certain legislative materials. The submitted documents tend to establish the value of, and the need for, funding for child care and development programs. Those are matters within the Legislature's prerogative and we may not superintend its determination.

Furthermore, we are not concerned here with statutory inconsistency. Instead, the issue relates solely to the construction of constitutional provisions. Proposition 98 added certain statutory provisions to the Education Code, Section 13 of Proposition 98 provides: "No provision of this Act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed ***1530** by the Governor." The legislation challenged by plaintiffs was enacted by the requisite two-thirds majorities and signed by the Governor. Accordingly, it is the constitutional provisions of Proposition 98 which are at issue in this case.

Finally, we are not here concerned with article XVI, section 8.5 of the Constitution, also added by Proposition 98. In that provision the voters determined that, within certain limits, state revenues in excess of the state appropriations limit should be used to improve education in the elementary and secondary schools and community colleges rather than be returned to the populace. The measure is self-executing; it requires no legislative action. Each year the Controller must transfer and allocate such excess revenues to the state school fund restricted for school districts and community colleges, and then must allocate those funds to the districts and community colleges on a per-enrollment basis. (Cal. Const., art. XVI, § 8.5, subds. (a), (c).) Those sums may be expended solely for purposes of instructional improvement and accountability. (Cal. Const., art. XVI, § 8.5, subd. (d).)

Article XVI, section 8.5 is an entirely different matter than article XVI, section 8. Section 8.5 deals with revenues which are constitutionally beyond the Legislature's spending prerogatives under article XIII B. Section 8.5 does not extend the Legislature's spending power to excess revenues; rather it imposes a self-executing, ministerial duty upon the Controller to transfer such excess revenues to a restricted portion of the school fund and thence to allocate such revenues to school districts and community college districts on a per-enrollment basis. Section 8.5 specifically restricts the purposes for which those funds may be expended. The specific provisions of section 8.5 would prohibit the Legislature from retaining and utilizing those funds for purposes of the Child Care and Development Services Act.

IV Issue on Appeal

In this case we are concerned with whether funding for the Child Care and Development Services Act is on its face beyond the educational funding requirements of article XVI, section 8, of the Constitution as enacted by Proposition 98.

Defendant Honig contends that the Legislature has plenary power to define how California's public school system operates as well as what entities constitute that system. Given that absolute authority, which remains undiminished by the enactment of Proposition 98, the Legislature was empowered to include funds for early childhood education and child development within the minimum funding guarantee established by that initiative. ***1531** He argues that the trial court, contrary to the settled and fundamental principles of constitutional adjudication, misconstrued the critical phrase "moneys to be applied by the State for the support of school districts" to be limited to funds directly allocated to school districts. In his view, "the definition of 'school districts' set forth in Proposition 98 is far from precise. Its uncertainty in fact made it necessary for the Legislature to refine and clarify which entities in the public school system were to be counted as falling within its minimum funding guarantee. This the Legislature did, three times. [¶] More importantly, nothing in Proposition 98 or any other provision of law either expressly or implicitly restricted the Legislature from including [the California Department of Education's] direct provision of child development services through contracts with private agencies within that guarantee. Since 1972, the Legislature has determined that private agencies, as well as public agencies, have been integral to the statewide provision of such services under the Child Development Act, and thereby to California's public school system. Accordingly, the Legislature's implementation of Proposition 98 in Sections 41202(f) and 8203.5(c) was not only possible and reasonable, it was consistent with its prior acts which made private agency child development services a recognized part of the public school system."

(7a) Plaintiffs counter that the plain language of Proposition 98 demonstrates that the funds must go directly to school districts and not to private entities contracting with the Department of Education. As they read the key phrase of the initiative, "monies to be applied by the State for the support of school districts" means funds "allocated to" or "appropriated for" school districts. Consequently, so their argument goes, the inclusion of non-school-district programs within the initiative's guarantee nullifies the central purpose of Proposition 98.

Real parties in interest argue alternatively that child development programs funded directly by the Department of Education are included within the phrase "school districts" but even if they are not, the Legislature has the power to amend the statutory definition of "school districts" contained in Proposition 98.

In analyzing these constitutional contentions we are bound by several fundamental principles of constitutional adjudication. (8) " 'Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Two important consequences flow from this fact. First, the entire lawmaking authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers *which are not expressly, or by necessary implication* ****1532*** *denied to it by the Constitution.* ... [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. *Such restrictions and limitations* [*imposed by the Constitution*] *are to be construed strictly, and are not to be extended to include matters not covered by the language used.*" ' (Italics added.)" (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d

168, 180 [172 Cal.Rptr. 487, 624 P.2d 1215], citing *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], citations omitted.)

(9) Another principle of constitutional adjudication requires that the constitutional provisions added by Proposition 98 be considered in light of all other relevant provisions of the Constitution, including those that contain, define, and limit the status of school districts and their relationship to the state. "The initiative amendment to the [C]onstitution itself must be interpreted in harmony with the other provisions of the organic law of this state of which it has become a part. To construe it otherwise would be to break down and destroy the barriers and limitations which the [C]onstitution, read as a whole, has cast about legislation, both state and local." (*Galvin v. Board of Supervisors* (1925) 195 Cal. 686, 692 [235 P. 450]. See also *Edler v. Hollopeter* (1931) 214 Cal. 427, 430 [6 P.2d 245].) In *Galvin v. Board of Supervisors, supra*, 195 Cal. 686, the petitioners sought to compel a county board of supervisors to submit an initiative ordinance to the local voters. The Supreme Court held that the provisions of the Constitution which reserve the initiative power to local voters must be construed in light of other provisions which contain, define, and limit the scope of permissible local legislation. (*Id.* at p. 692.) This precluded local voters from accomplishing by initiative that which was beyond the powers of the local board of supervisors. (*Id.* at p. 693. See also *Giddings v. Board of Trustees* (1913) 165 Cal. 695, 698 [133 P. 479].) That principle of construction applies here.

(7b) When we consider Proposition 98 in light of other provisions of our Constitution, specifically article IX, which is devoted to education, and the long, unbroken line of authorities interpreting such provisions, we must reject an underlying premise of plaintiffs' argument. According to plaintiffs, the challenged legislation is invalid because it divests school districts of complete and total control over the funds the state is required to devote to education under Proposition 98. As plaintiffs put it: "Of course, if a school district decides to use part of its funding for child care and development programs, it is entitled to do so. It is also entitled to ignore child care and development altogether, and use its funding for other programs that it considers to be a higher priority." Nothing in Proposition 98 states or implies ***1533** that school districts are to have the autonomy claimed by plaintiffs. Article IX, section 5, of our Constitution still provides for one system of common schools, which implies a "unity of purpose as well as an entirety of operation, and the direction to the [L]egislature to provide 'a' system of common schools means *one* system which shall be applicable to all the common schools within the state." (*Kennedy v. Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics original; see also *Serrano I, supra*, 5 Cal.3d at p. 595.)

Since Proposition 98 did not alter the state's role in education, the Constitution continues to make education and the operation of the public schools a matter of statewide rather than local or municipal concern. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 179; *Esberg v. Badaracco, supra*, 202 Cal. at pp. 115-116; *Kennedy v. Miller, supra*, 97 Cal. at p. 431; *Whisman v. San Francisco Unified School Dist., supra*, 86 Cal.App.3d at p. 789.) Local school districts remain agencies of the state rather than independent, autonomous political bodies. (*Allen v. Board of Trustees, supra*, 157 Cal. at pp. 725-726.) The Legislature's control over the public education system is still plenary. (*Hall v. City of Taft, supra*, 47 Cal.2d at pp. 180-181; *Pass School Dist. v. Hollywood Dist., supra*, 156 Cal. at p. 419; *San Carlos Sch. Dist. v. State Bd. of Education, supra*, 258 Cal.App.2d at p. 324; *Town of Atherton v. Superior Court, supra*, 159 Cal.App.2d at p. 421.) The Legislature still has ultimate and nondelegable responsibility for education in this state. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 181; *Piper v. Big Pine School Dist., supra*, 193 Cal. at p. 669.) All school properties are still held in trust with the state as the beneficial owner. (*Hall v. City of Taft, supra*, 47 Cal.2d at p. 182; *Chico Unified Sch. Dist. v. Board of Supervisors, supra*, 3 Cal.App.3d at p. 855; *Town of Atherton v. Superior Court, supra*, 159 Cal.App.2d at p. 421.) And school districts still do not have a proprietary interest in moneys which are apportioned to them. (*Gridley School District v. Stout, supra*, 134 Cal. at p. 593; *Butler v. Compton Junior College Dist., supra*, 77 Cal.App.2d at p. 729.) Of course, if the electorate chose to alter our constitutional scheme for education it could do so. Education could be made a matter of local concern and school districts could be given greater autonomy. But we cannot conclude that such a major governmental restructuring was accomplished by implication in a measure dealing with public finance which spoke not at all on such matters.

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In light of the Legislature's plenary authority over education and its legal relationship with school districts, we do not find Proposition 98 to be clear and unambiguous as asserted by plaintiffs. The measure establishes a minimum sum for "the monies to be applied by the state for the support of school districts and community college districts ...." Rather than expressly divesting the state of its traditional authority over education funds, ***1534** this provision would appear to retain state control since the moneys are to be "applied by the state." The measure does not expressly restrict the Legislature's plenary authority nor does it grant to school districts exclusive control over education funds. Had such a result been intended there are any number of linguistic formulations which could have so specified with adequate clarity. As a court, we cannot impose limitations or restrictions upon the Legislature's prerogatives in the absence of language reasonably calculated to require such a result when subjected to strict construction. (*Pacific Legal Foundation v. Brown, supra*, 29 Cal.3d at p. 180.)

Given plaintiffs' facial attack, it is enough to hold, as we do, that legislative programs which advance, and hence support, the educational mission of school districts and community college districts may constitutionally be included within the funding guarantee of Proposition 98. It cannot be said that the Child Care and Development Services Act totally and on its face fails to meet this test. [FN11] This is as far as we need go in this case. The plaintiffs asserted, and the judgment holds, that only funds allocated to and administered by school districts satisfy the requirements of Proposition 98. Such a conclusion improperly grants school districts a proprietary interest in school funds and gives them a degree of political autonomy in contravention to the Legislature's long-standing and well-established plenary authority over education in this state. Since we do not find such a fundamental governmental restructuring in Proposition 98, we must reject the reasoning of the trial court and reverse its judgment.

FN11 In reaching this conclusion we reject real parties' contention that the Legislature has impliedly defined programs under the Child Care and Development Services Act as being within the definition of "school districts." Section 41302.5 defines the agencies which are included within the phrase "school district" as used in Proposition 98. In implementing Proposition 98 the Legislature referred to that section but did not see fit to amend it to include child care and development programs. (§ 41202, subd. (f).) And in section 8203.5, subdivision (c), the Legislature included Child Care and Development Services Act funding within the Proposition 98 guarantee "whether or not those funds are allocated to school districts ...." By so providing the Legislature clearly chose not to include child care and development programs within the definition of school districts.

Summary and Conclusion

In this state, education is a matter of statewide rather than local or municipal concern. Local school districts are agencies of the state subject to the Legislature's plenary authority over education. Local school districts do not have political autonomy and have no proprietary interest in the properties or moneys they hold in trust for the state. Proposition 98 set forth minimum sums to be applied by the state for the support of school districts and community colleges. This measure does not deprive the Legislature of ***1535** its plenary authority over education and does not grant school districts political autonomy or a proprietary interest in the minimum funding to be applied by the state for support of school districts and community colleges. Accordingly, we reject the assertion that all funds within the minimum funding requirements of Proposition 98 must be allocated to, and administered by, school districts. Our opinion goes no further. While the Legislature's authority over education and education funding is broad, it is not unlimited. Our conclusion that Proposition 98 did not divest the Legislature of its traditional authority over education should not be construed to foreclose specific challenges to the Legislature's decisions based upon appropriate factual and legal showings. We hold only that the decision to include funding for the Child Care and Development Services Act within the Proposition 98 minimum funding guarantees is not in toto and on its face beyond the Legislature's constitutional authority.

Disposition

The judgment is reversed. Appellant Honig shall recover his costs on appeal.

Marler, J., and Nicholson, J., concurred.

A petition for a rehearing was denied May 27,

1992, and the petition of plaintiffs and respondents for review by the Supreme Court was denied July 30, 1992. Mosk, J., was of the opinion that the petition should be granted. ***1536**

Appendix

Proposition 98 provides in full:

Section 1. This Act shall be known as "The Classroom Instructional and Accountability Act."

Section 2. Purpose and Intent. The People of the State of California find and declare that:

(a) California schools are the fastest growing in the nation. Our schools must make room for an additional 130,000 students every year.

(b) Classes in California's schools have become so seriously overcrowded that California now has the largest classes of any state in the nation.

(c) This act will enable Californians to once again have one of the best public school systems in the nation.

(d) This act will not raise taxes.

(e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

(f) This Act will require that excess state funds be used directly for classroom instructional improvement by providing for additional instructional materials and reducing class sizes.

(g) This Act will establish a prudent state reserve to enable California to set aside funds when the economy is strong and prevent cutbacks or tax increases in times of severe need or emergency.

Section 3. Section 5.5 is hereby added to Article XIIIB as follows:

Section 5.5 Prudent State Reserve. The Legislature shall establish a prudent state reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article.

Section 4. Section 2 of Article XIIIB is hereby amended to read as follows:

Section 2. Revenues in Excess of Limitation. ***1537**

(a) All revenues received by the state in excess of that amount which is appropriated by the state in compliance with this Article, and which would otherwise by required, pursuant to subdivision (b) of this Section, to be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years, shall be transferred and allocated pursuant to Section 8.5 of Article XVI up to the maximum amount permitted by that section.

(b) Except as provided in subdivision (a) of this Section, revenues received by any entity of government in excess of that amount which is appropriated by such entity in compliance with this Article during the fiscal year shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

Section 5. Section 8 of Article XVI is hereby amended to read as follows:

Section 8. School Funding Priority

(a) From all state revenues there shall first be set apart the monies to be applied by the state for support of the public school system and public institutions of higher education.

(b) Commencing with the 1988-89 fiscal year, the monies to be applied by the state for the support of school districts and community college districts shall not be less than the greater of:

(1) The amount which, as a percentage of the State General Fund revenues which may be appropriated pursuant to Article XIIIB, equals the percentage of such State General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87; or

(2) The amount required to ensure that the total allocations to school districts and community college districts from the State General Fund proceeds of taxes appropriated pursuant to Article XIIIB and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior year, adjusted for increases in enrollment, and adjusted for changes in the cost of living pursuant to the provisions of Article XIIIB.

(c) The provisions of subdivision (b) of this Section may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that no urgency statute enacted under this subdivision may be made part of or included within any bill enacted pursuant to Section 12 of Article IV. ***1538**

Section 6. Section 8.5 of Article XVI is hereby added as follows:

Section 8.5. Allocations to State School Fund

(a) In addition to the amount required to be applied for the support of school districts and community colleges pursuant to Section 8(b), the Controller shall during each fiscal year transfer and allocate all revenues available pursuant to subdivision (a) of Section 2 of Article XIIIB, up to a maximum of four percent (4%) of the total amount required pursuant to Section 8(b) of this Article, to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the ten states with the highest annual expenditures per student for elementary and high schools, and that average clas [*sic*] size equals or is less than the average class size of the ten states with the lowest clas [*sic*] size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of Community Colleges mutually determine that current annual expenditures per student for community colleges in this state equal or exceed the average annual expenditure per student of the ten states with the highest annual expenditures per student for community colleges.

(b) Notwithstanding the provisions of Article XIIIB, funds allocated pursuant to this section shall not constitute appropriations subject to limitation, but appropriation limits established in Article XIIIB shall be annually increased for any such allocations made in the prior year.

(c) From any funds transferred to the State School Fund pursuant to paragraph (a) of this Section, the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State ***1539** School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) of this section, together with an amount equal to the total amount of revenues allocated pursuant to subdivision (a) of this section in all prior years, as adjusted if required by Section 8(b)(2) of Article XVI, shall be expended solely for the purposes of instructional improvement and accountability as required by law.

(e) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

Section 7. Section 33126 is hereby added to Article 2 of Chapter 2 of Part 20 of Division 2 of Title 2 of the Education Code to read as follows:

5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699, 74 Ed. Law Rep. 165
(Cite as: 5 Cal.App.4th 1513)

33126. School Accountability Report Card

In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall by March 1, 1989, develop and present to the Board of Education for adoption a statewide model School Accountability Report Card.

(a) The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:

(1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.

(2) Progress toward reducing drop-out rates.

(3) Estimated expenditures per student, and types of services funded.

(4) Progress toward reducing class sizes and teaching loads.

(5) Any assignment of teachers outside their subject areas of competence.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other student support services. ***1540**

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement.

(11) Classroom discipline and climate for learning.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(b) in developing the statewide model School Accountability Report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the Superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists, provided that the majority of the task force shall consist of practicing classroom teachers.

Section 8. Section 35256 is hereby added to Article 8 of Chapter 2 of Part 20 of Division 3 of Title 2 of the Education Code to read as follows:

35256. School Accountability Report Card

The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.

(a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

(b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request. ***1541**

Section 9. Section 41300.1 is hereby added to Article 1 of Chapter 3 of Part 24 of Division 3 of Title 2 of the Education Code to read as follows:

41300.1 Instructional Improvement and Accountability.

5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699, 74 Ed. Law Rep. 165
(Cite as: 5 Cal.App.4th 1513)

The amount transferred to Section A of the State School Fund pursuant to Section 8.5 of Article XVI of the State Constitution shall to the maximum extent feasible be expended or encumbered during the fiscal year received and solely for the purpose of instructional improvement and accountability.

(a) For the purpose of this section, "instructional improvement and accountability" shall mean expenditures for instructional activities for school sites which directly benefit the instruction of students, and shall be limited to expenditures for the following:

(1) Lower pupil-teacher ratios until a ratio is attained of not more than 20 students per teacher providing direct instruction in any class, and until a goal is attained of total teacher loads of less than 100 total students per teacher in all secondary school classes in academic subjects as defined by the Superintendent of Public Instruction.

(2) Instructional supplies, instructional equipment, instructional materials and support services necessary to improve school conditions.

(3) Direct student services needed to ensure that each student makes academic progress necessary to be promoted to the next appropriate grade level.

(4) Staff development which improves services to students or increases the quality and effectiveness of instructional staff, designed and implemented by classroom teachers and other participating school district personnel, including the school principal, with the aid of outside personnel as necessary. Classroom teachers shall comprise the majority of any group designated to design such staff development programs for instructional personnel.

(5) Compensation of teachers.

(b) Funds transferred to each school district, pursuant to this section shall be deposited in a separate account and shall be maintained and appropriated separately from funds from all other sources. Funds appropriated pursuant to this section shall supplement other resources of each school district and shall not supplant any other funds. ***1542**

Section 10. Section 14020.1 is hereby added to Article 1 Chapter 1 of Part 9 of Division 1 of Title 1 of the Education Code to read as follows:

14020.1. Instructional Improvement and Accountability.

The amount transferred to Section B of the State School Fund pursuant to Section 8.5 of Article XVI of the State Constitution shall to the maximum extent feasible be expended or encumbered during the year received solely for the purposes of instructional improvement and accountability.

(a) For the purposes of this section, "instructional improvement and accountability" shall mean expenditures for instructional activities for college sites which directly benefit the instruction of students and shall be limited to expenditures for the following:

(1) Programs which require individual assessment and counseling of students for the purpose of designing a curriculum for each student and establishing a period of time within which to achieve the goals of that curriculum and the support services needed to achieve these goals, provided that any such program shall first have been approved by the Board of Governors of Community Colleges.

(2) Instructional supplies, instructional equipment, and instructional materials and support services necessary to improve campus conditions.

(3) Faculty development which improves instruction and increases the quality and effectiveness of instructional staff, as mutually determined by faculty and the community college district governing board.

(4) Compensation of faculty.

(b) Funds transferred to each community college district pursuant to this section shall be deposited in a separate account and shall be maintained and appropriated separately from funds from all other sources. Funds appropriated pursuant to this section shall supplement other resources of each community college district and shall not supplant funds appropriated from any other source.

Section 11. Section 14022 is added to the Educa-

tion Code to read as follows:

14022. (a) For the purposes of Section 8 and Section 8.5 of Article XVI of the California Constitution, "enrollment" shall mean: ***1543**

(1) In community college districts, full-time equivalent students receiving services, and

(2) In school districts, average daily attendance when students are counted as average daily attendance and average daily attendance equivalents for services not counted in average daily attendance.

(b) Determination of enrollment shall be based upon actual data from prior years and for the next succeeding year such enrollments shall be estimated enrollments adjusted for actual data as actual data becomes available.

Section 12. Section 41302.5 is added to the Education Code to read as follows:

41302.5. For the purposes of Section 8 and Section 8.5 of Article XVI of the California Constitution, "school districts" shall include county boards of education, county superintendents of schools and direct elementary and secondary level instructional services provided by the State of California.

Section 13. No provision of this Act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor.

Section 14. Severability

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, shall be held invalid, the remainder of this Act, to the extent that it can be given effect, shall not be affected thereby, and to this end the provisions of this Act are severable.

Cal.App.3.Dist.
California Teachers Assn. v. Hayes
5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699, 74 Ed. Law Rep. 165

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110 Cal.App.4th 508, 1 Cal.Rptr.3d 673, 178 Ed. Law Rep. 404, 03 Cal. Daily Op. Serv. 6157, 2003 Daily Journal D.A.R. 7709
(Cite as: 110 Cal.App.4th 508, 1 Cal.Rptr.3d 673)

Court of Appeal, Fifth District, California.
M. W., a Minor, etc., Plaintiff and Respondent,
v.
PANAMA BUENA VISTA UNION SCHOOL DISTRICT, Defendant and Appellant.

No. F037618.
July 11, 2003.
Certified for Partial Publication. FN*

FN* Parts II, III, and IV of the majority opinion are not certified for publication. (See Cal. Rules of Court, rules 976(b) and 976.1.)

Review Denied Oct. 1, 2003.

Background: Student sued school district, seeking damages for negligent failure to supervise and careless failure to guard, maintain, inspect and manage school premises, based upon sexual assault committed by another junior high school student. The Superior Court, Kern County, Super. Ct. No. 235872, James M. Stuart, J., entered judgment for student on jury verdict awarding $1,547,260 in economic damages and $850,000 in apportioned non-economic damages. School district appealed.

Holdings: The Court of Appeal, Wiseman, J., held that:
(1) risk of harm to student was foreseeable;
(2) school district was not required to have foreseen particular form of assault in order for duty of care to be imposed; and
(3) school district owed student duty of care to protect him from assault on campus, including sexual assault.

Affirmed.

Harris, J., concurred with separate opinion.

Levy, J., dissented with opinion.

West Headnotes

[1] Schools 345 89.2

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.2 k. Negligence in General. Most Cited Cases

Special relationship is formed between a school district and its students resulting in the imposition of an affirmative duty on the school district to take all reasonable steps to protect its students; this affirmative duty arises, in part, based on the compulsory nature of education.

[2] Schools 345 89.11(1)

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.11 Supervision of Other Pupils
345k89.11(1) k. In General. Most Cited Cases

Purpose of the law requiring supervision of students on school property is to regulate students' conduct so as to prevent disorderly and dangerous practices which are likely to result in physical injury to immature scholars. West's Ann.Cal.Educ.Code § 44807; 5 CCR § 5552.

[3] Schools 345 89.2

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.2 k. Negligence in General. Most Cited Cases

Student may recover for injuries proximately caused by a breach of a school district's duty to supervise. West's Ann.Cal.Educ.Code § 44807; 5 CCR § 5552.

[4] Schools 345 89.11(1)

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.11 Supervision of Other Pupils
345k89.11(1) k. In General. Most Cited Cases

Risk of harm to special education student sexually assaulted by another student on junior high school property prior to beginning of classes was foreseeable, for purpose of assaulted student's negligent supervision action; district was aware that some students arrived on campus prior to commencement of scheduled supervision, students arriving on campus prior to commencement of supervision were not supervised, district schooled special education students and was aware that plaintiff student arrived on campus prior to commencement of supervision and was susceptible to abuse, and student who committed assault had been subject of complaints by minor and had been disciplined for numerous serious infractions. West's Ann.Cal.Educ.Code § 44807; 5 CCR § 5552.
See 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 154; Cal. Jur. 3d, Negligence, § 145.

[5] Schools 345 89.2

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.2 k. Negligence in General. Most Cited Cases

Existence of a duty of care of a school district toward a student depends, in part, on whether the particular harm to the student is reasonably foreseeable.

[6] Schools 345 89.2

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.2 k. Negligence in General. Most Cited Cases

Schools 345 89.5(1)

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.5 Condition of Premises
345k89.5(1) k. In General. Most Cited Cases

For purposes of determining whether a duty of care exists on the part of a school district toward a student, students are not "at risk" merely because they are at school, and schools, including school restrooms, are not dangerous places per se.

[7] Negligence 272 213

272 Negligence
272II Necessity and Existence of Duty
272k213 k. Foreseeability. Most Cited Cases

For purposes of determining whether duty of care exists, foreseeability of harm is determined in light of all the circumstances and does not require prior identical events or injuries.

[8] Schools 345 89.2

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.2 k. Negligence in General. Most Cited Cases

School district was not required to have foreseen particular form of assault perpetrated upon special education student at junior high school, namely, act of sodomy, in order for duty of care to be imposed upon district; there was no meaningful distinction between physical assault and sexual assault for purposes of foreseeability. West's Ann.Cal.Educ.Code § 44807; 5 CCR § 5552.

[9] Schools 345 89.11(1)

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.11 Supervision of Other Pupils
345k89.11(1) k. In General. Most

Cited Cases

School district owed special education student duty of care to protect him from assault on junior high school campus, including sexual assault perpetrated by another student; harm to special education students was foreseeable, school district had statutory duty to take all reasonable steps to protect students, burden on school districts to ensure adequate supervision for students permitted on their campuses prior to start of school was relatively minimal, and policy concern of providing children with safe learning environments was paramount. West's Ann.Cal.Educ.Code § 44807; 5 CCR § 5552.

[10] Schools 345 89.11(1)

345 Schools
345II Public Schools
345II(F) District Liabilities
345k89.11 Supervision of Other Pupils
345k89.11(1) k. In General. Most Cited Cases

Rule that imposition of duty of care to protect against sexual misconduct was contingent upon showing that particular harm was foreseeable did not apply to determination of whether school district owed duty of care to special education student sexually assaulted by another student. West's Ann.Cal.Educ.Code § 44807; 5 CCR § 5552.

****674 *511** Sylvester & Oppenheim, Richard D. Oppenheim, Jr., Sherman Oaks, Danalynn Pritz; Lewis, D'Amato, Brisbois & Bisgaard, R. Gaylord Smith, Jeffry A. Miller, San Diego; Robinson, Palmer & Logan and Gary Logan, Bakersfield, for Defendant and Appellant.

Law Offices of Ralph B. Wegis and Ralph B. Wegis, Bakersfield, for Plaintiff and Respondent.

OPINION

WISEMAN, J.

We are called to address the accountability of school districts for actions that occur on their campuses when school grounds are open to students during non-instructional times. In this case, an eighth grade special education student filed suit against a school district after he was sodomized by another student in the school bathroom prior to the beginning of class. ****675** The school district provided only general supervision at the time, under which no adult was specifically responsible for supervision of the students on campus. A jury returned a verdict against the school district in excess of $2 million.

The school district appeals, arguing that it owed no duty of care to the student to prevent the sexual assault. We disagree. The assault occurred on the school's watch, while the student was entrusted to the school's care. It was substantially caused by the school's indifference toward the dangers posed by failing to adequately supervise its students, particularly special education students. In the published portion of this opinion, we find the school district owed the student a duty of care to protect him from this foreseeable assault.

In the unpublished portion of this opinion, we determine the district was not immune from liability and sufficient evidence supports the jury's findings of liability and damages. We affirm the judgment.

PROCEDURAL AND FACTUAL HISTORIES

Earl Warren Junior High School is a 20–acre campus in defendant and appellant Panama Buena Vista Union School District (District) in Bakersfield, California, with seventh and eighth grade students. During the 1996–1997 school year, the gates to the school were unlocked at approximately 7:00 a.m. when custodial and cafeteria staff arrived. Custodial staff unlocked the bathrooms sometime between 7:00 a.m. and 7:45 a.m. The school principal typically arrived at 7:15 a.m. and the vice-principal between 7:20 a.m. and ***512** 7:30 a.m. Office staff arrived between 7:00 a.m. and 7:30 a.m. The teachers were required to be on duty to supervise at 7:45 a.m., and they arrived at varying times before the start of their shifts. School started at 8:15 a.m. Prior to 8:15 a.m., student ac-

cess to the campus was unrestricted.

During the 1996–1997 school year, there were 560 students enrolled at the school. The majority of the students arrived on campus between 7:45 a.m. and 8:05 a.m. According to the principal, at 7:15 a.m., there were no more than five or 10 students on campus and sometimes no students at all. The school offered zero-period physical education at 7:30 a.m. for approximately 90 students. Those students typically arrived between 7:15 a.m. and 7:30 a.m. The principal testified that the early morning hours were historically calm and quiet. Prior to May 21, 1997, there were no reported problems in the morning before the start of school.

Each of the four junior high schools in the District had organized, directed supervision 30 minutes before the start of school. Prior to that time, each of the schools employed a different type of supervision. The decision regarding the type of supervision was left to the discretion of each school's principal. Two of the junior high schools required students who arrived early to congregate in a common area supervised by an adult.

At Earl Warren, the school had a policy of providing "general" supervision prior to 7:45 a.m., where every adult on campus was charged with the broad responsibility of supervising the students. On this critical point, the principal was impeached with his prior testimony. In his deposition, he testified that between 7:00 a.m. and 7:45 a.m. no one had the responsibility for supervision of the students. He later changed his answer to add "as relates to scheduled teacher supervision only." In any event, no adult had the responsibility to supervise students in a specific area. No one maintained visual contact over the students who arrived early, and there was ****676** no one supervising the bathrooms and handball courts, identified as "trouble spots" due to lack of visibility.

By contrast, "direct" or "scheduled" supervision began at 7:45 a.m., under which an assigned person supervised each area of the campus. The campus was divided into zones that specific individuals were responsible for supervising. The parents were never informed that there was no specific plan for supervision of the students prior to 7:45 a.m. Nor were they ever asked not to bring their children to school prior to 7:45 a.m.

In May 1997, plaintiff and respondent M.W. (the minor), 15 years old at the time, was enrolled in eighth grade at Earl Warren in a special education class. He had a third-grade mentality, and the school categorized him as ***513** mentally retarded, a designation that carried special concerns with regard to his safety and well-being. The minor had unique vulnerabilities and was susceptible to being "tricked" and emotionally abused. The principal testified that sexual abuse of special education students was also a concern. The minor attracted attention because he frequently stood by himself. He struggled socially among his peers and complained to school personnel about being teased.

The minor's mother, a teacher with the District, routinely dropped the minor off at school between 7:15 a.m. and 7:20 a.m. on her way to work. The minor's mother testified that there were numerous parents transporting their children for the zero-period class and a lot of students walking about the campus. She dropped her son off in front of the school office. Between March and May 1997, the minor was sometimes reluctant to get out of the car. The minor's mother did not request school personnel to watch out for her son in the morning or to restrict his access to the campus. She never received any notice from the school requesting that she not bring her son early or advising that there was no supervision prior to 7:45 a.m. The minor's mother believed her son was supervised prior to the start of school.

The minor generally stayed near the school office and would often go inside and talk to the staff. Most of the other students who arrived early stayed inside an amphitheater area near the office. Sometimes the minor played at the basketball court by the gym. The minor was self-sufficient, well-

behaved, and could use the restroom without adult assistance. Both the principal and vice-principal were aware that the minor was dropped off at school at 7:15 a.m.

Chris J. was a special education student at Earl Warren with the minor. He turned 14 years old in May 1997. Chris had educational difficulties and was in a resource specialist program. Chris had demonstrated misconduct with multiple individuals, including students, teachers and adults, and was frequently disciplined at school.

During his seventh and eighth grade years at Earl Warren, Chris received over 30 instances of discipline. His discipline record included 14 acts of defiance of authority; nine bus tickets for violating bus rules, culminating in suspension from the bus for the remainder of the school year; and six gum-chewing incidents. Chris was disciplined for disrupting class, damaging school property, displaying an inappropriate attitude, throwing food at the principal, and calling the yard supervisor a "bitch." Chris's misconduct was not limited to adults. He was also disciplined for spitting food at a student; kicking a male student in the groin; fighting (horseplay) with a student at the bus stop; "flipping off" a student; and punching and teasing the minor. As a ***514** result of his conduct, Chris received numerous suspensions from ****677** school. The vice principal testified that Chris's response to the discipline was improving in his eighth grade year. Nonetheless, some of the more serious incidents—kicking a male student in the groin, calling the yard supervisor a "bitch," throwing food at the principal, and continuing acts of defiance—occurred in Chris's eighth grade year.

In November 1996, Chris's bus privileges were suspended in his eighth grade year. Afterward, Chris' father dropped him off at 6:20 a.m. or 6:30 a.m. before the school gates opened. School personnel did not have a specific recollection of seeing Chris on campus in the early morning hours. However, the principal testified that if Chris were dropped off at the school that early, he would have expected school personnel to have noticed him.

Chris and other students emotionally tormented the minor on a daily basis by teasing and ridiculing him before school started. They called the minor "stupid" and "retarded" in an effort to take advantage of him. According to Chris, the students did so because they were bored and "like[d] to get kicks out of other people's weaknesses." The minor sometimes retreated to the principal's office to escape the teasing. He complained several times to the vice-principal and his teachers about the teasing, but was only told to stay away from Chris. According to the minor, on one occasion in the seventh grade, Chris was sent to the principal's office after the minor complained, but Chris did not get in much trouble. The minor testified that, while in the eighth grade, he complained to the vice principal three separate times about Chris, but was always given the same response—to stay away from Chris—even after explaining that staying away did not work.

On May 21, 1997, just days before the end of the school year, Chris was "uptight" and "felt like he wanted to have sex that morning." Chris had been thinking about sex all morning when he witnessed the minor being dropped off at school by his mother. Chris remembered being able to lure the minor into an unlocked and unsupervised classroom in March 1997, where he grabbed the minor by the arms and rubbed his penis against the minor's penis. The minor did not tell anyone about that incident, which lasted about 10 minutes, because he was scared.

At approximately 7:15 a.m., with no adults in sight, Chris tricked the minor into entering the boy's restroom and then sodomized him. The two were in the restroom approximately 10 minutes. Chris threatened the minor by saying that if he told anyone, he (Chris) would kill him by punching his nose bone into his brain. Chris stated that he picked the minor "because he believed [the minor's] mental capacity to be that of a third or fourth grader and did not believe [the minor] could remember the

things he had done to him, and ***515** therefore, he would not tell anybody, anyone, and also, the threats he made towards [the minor] due to his mentality would scare him enough that he would not ever tell anyone."

Later that day, the minor told his mother about the assault in the bathroom, and she notified the District and the police. The following day, the minor spoke to the vice-principal about the assault. During the investigation, the District and the minor's mother first found out about the March 1997 incident in the classroom. Chris was arrested and subsequently expelled from school.

The minor became quiet and withdrawn. He constantly feared that Chris was going to kill him and obsessed about his own safety. He took excessively long baths, picked at his body and wiped his bottom until it bled. His seizures increased, and ****678** he reported hearing voices. The minor was diagnosed with major depression recurrent with psychotic features. He was also diagnosed with post-traumatic stress disorder. The minor was twice hospitalized, including following a suicide attempt after students locked him in a "porta potty" in April 1999.

On March 11, 1998, the minor filed a complaint for personal injuries and damages against the District, Chris and Chris's parents. The minor's amended complaint alleged one cause of action against the District for negligent failure to supervise and careless failure to guard, maintain, inspect and manage the school premises. The District moved for summary judgment, alleging it did not owe a duty of care to supervise the minor or Chris more closely than it did, since it was unaware that the minor was at risk of a physical or sexual assault by Chris. The District also maintained that the alleged failure to adequately supervise did not render the school restroom a dangerous condition of public property. The trial court denied the motion, finding that the District failed to prove it had a complete defense or that its duty could not be established by the minor.

In August 1999, the case resulted in a mistrial. FN1 In January 2000, the minor was admitted to an independent living school and residential facility where he showed improvement. In July 2000, the District filed a renewed motion for summary judgment based on new decisional law and testimony from the first trial. The District argued that it owed no duty to the minor to protect him from an unforeseeable sexual assault and that any alleged lack of supervision was not a cause of plaintiff's injuries. The court denied the motion, finding a triable issue of fact regarding whether it was foreseeable that the minor's mental capacity exposed him to harm from third persons and whether the ***516** District provided the kind of supervision that a reasonably prudent person would afford under the circumstances. The court found the causation issue to be a different one than was brought in the first motion and therefore not a proper subject of a renewed motion.

> FN1. There are no court minutes or other documents in our record relating to the mistrial. However, the mistrial is referenced in the District's renewed motion for summary judgment.

Following a 15–day trial in November and December 2000, the jury returned a verdict in favor of the minor in the amount of $2,547,260, which represented $1,547,260 for economic damages and $1,000,000 for non-economic damages. The jury attributed 85 percent of the fault to the District and 15 percent of the fault to Chris. Judgment was entered against the District in the amount of $2,165,171 (85 percent of $2,547,260). The court granted the minor's motion for a corrective nunc pro tunc order, and the judgment against the District was amended to $2,397,260 ($1,547,260 plus 85 percent of $1,000,000). The court denied the District's motions for a new trial and judgment notwithstanding the verdict.

DISCUSSION

The District claims reversible error based on a number of independent grounds: 1) it owed the

minor no duty of care to prevent the sexual assault; 2) even assuming it owed and breached its duty of care to the minor, the breach was not the actual cause of the minor's injuries; 3) it is immune from liability; and 4) there is insufficient evidence to support the jury's apportionment of fault and the minor's claim for future damages.

****679 *I. Duty of care***

The District maintains it owed the minor no duty to protect him from the sexual assault, since it had no prior actual knowledge of Chris's propensity to commit the assault. The existence of a duty of care is a question of law decided on a case-by-case basis. (*Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1458, 249 Cal.Rptr. 688; *Bartell v. Palos Verdes Peninsula Sch. Dist.* (1978) 83 Cal.App.3d 492, 498, 147 Cal.Rptr. 898.) " 'While it is the province of the jury, as trier of fact, to determine whether an unreasonable risk of harm was foreseeable under the particular facts of a given case, the ... court must still decide as a matter of law whether there was a duty in the first place, even if that determination includes a consideration of foreseeability. [Citations.]' [Citation.]" (*Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1078, 107 Cal.Rptr.2d 801; see also *Wiener v. Southcoast Childcare Centers, Inc.* (2003) 107 Cal.App.4th 1429, 1436, 132 Cal.Rptr.2d 883[FN*] [issue of foreseeability, when analyzed to determine existence or scope of duty, is question of law].) Moreover, in light of the jury's verdict in this case, "[i]n reviewing the evidence on such an appeal all conflicts must be resolved in favor of the respondent, and all legitimate ***517** and reasonable inferences indulged in to uphold the verdict if possible." (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429, 45 P.2d 183.) Thus, to the extent there are any factual conflicts underlying the legal question of duty, those factual conflicts must be resolved in favor of the minor.

FN* Reporter's Note: Review granted July 30, 2003, S116358.

" 'As a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct. Such a duty may arise, however, if "(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection." [Citations.]' [Citations.]" (*Leger v. Stockton Unified School Dist., supra,* 202 Cal.App.3d at p. 1458, 249 Cal.Rptr. 688.)

[1] A special relationship is formed between a school district and its students resulting in the imposition of an affirmative duty on the school district to take all reasonable steps to protect its students. This affirmative duty arises, in part, based on the compulsory nature of education. (*Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 714–715, 230 Cal.Rptr. 823; see also Cal. Const., art. I, § 28, subd. (c) [students have inalienable right to attend safe, secure and peaceful campuses]; Ed.Code, § 48200 [children between ages 6 and 18 years subject to compulsory full-time education].) "[T]he right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. The school premises, in short, must be safe and welcoming." (*In re William G.* (1985) 40 Cal.3d 550, 563, 221 Cal.Rptr. 118, 709 P.2d 1287.)

The principles pertaining to a school district's duty to supervise students are well established. "It is the duty of the school authorities to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection. [Citations.] The school district is liable for injuries which result from a failure of its officers and employees to use ordinary care in this respect." (*Taylor v. Oakland Scavenger Co.* (1941) 17 Cal.2d 594, 600, 110 P.2d 1044; see also ****680***Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747, 87 Cal.Rptr.

376, 470 P.2d 360; Ed.Code, § 44807; Cal.Code Regs., tit. 5, § 5552 [where playground supervision is not otherwise provided, principal of school must provide for supervision by certificated employees of pupils on the school grounds during recess and other intermissions and before and after school].)

[2] The purpose of the law requiring supervision of students on school property is to regulate students' conduct "so as to prevent disorderly and ***518** dangerous practices which are likely to result in physical injury to immature scholars ...." (*Forgnone v. Salvadore U.E. School Dist.* (1940) 41 Cal.App.2d 423, 426, 106 P.2d 932.) As noted by the California Supreme Court, "[s]uch regulation is necessary precisely because of the commonly known tendency of students to engage in aggressive and impulsive behavior which exposes them and their peers to the risk of serious physical harm." (*Dailey v. Los Angeles Unified Sch. Dist., supra,* 2 Cal.3d at p. 748, 87 Cal.Rptr. 376, 470 P.2d 360.)

The California Supreme Court explained the standard of care imposed upon a school district in supervising its students as follows: "The standard of care imposed upon school personnel in carrying out [the] duty to supervise is identical to that required in the performance of their other duties. This uniform standard to which they are held is that degree of care 'which a person of ordinary prudence, charged with [comparable] duties, would exercise under the same circum[s]tances.' [Citations.] Either a total lack of supervision [citation] or ineffective supervision [citation] may constitute a lack of ordinary care on the part of those responsible for student supervision." (*Dailey v. Los Angeles Unified Sch. Dist., supra,* 2 Cal.3d at p. 747, 87 Cal.Rptr. 376, 470 P.2d 360; see also *Leger v. Stockton Unified School Dist., supra,* 202 Cal.App.3d at p. 1459, 249 Cal.Rptr. 688.)

[3] California courts have long recognized that a student may recover for injuries proximately caused by a breach of this duty to supervise. (See, e.g., *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 523, 150 Cal.Rptr. 1, 585 P.2d 851 [student stated claim against school district based on failure to exercise due care in supervision on school premises]; *Dailey v. Los Angeles Unified Sch. Dist., supra,* 2 Cal.3d at pp. 747–751, 87 Cal.Rptr. 376, 470 P.2d 360 [sufficient evidence to support verdict against school district for negligent supervision even where another student's misconduct was immediate, precipitating cause of injury]; *Lucas v. Fresno Unified School Dist.* (1993) 14 Cal.App.4th 866, 871–873, 18 Cal.Rptr.2d 79 [school district had legal duty to supervise students to prevent them from throwing dirt clods at each other during recess]; *Charonnat v. S.F. Unified Sch. Dist.* (1943) 56 Cal.App.2d 840, 845–846, 133 P.2d 643 [school district liable for negligence or willful misconduct of pupil resulting in injuries to another pupil while both were playing during recess hour]; *Forgnone v. Salvadore U.E. School Dist., supra,* 41 Cal.App.2d at p. 426, 106 P.2d 932 [wrongful absence of supervisor may constitute negligence creating liability on part of school district for student's injuries].)

[4][5][6][7] In this case, we decide whether the District owed a duty to protect the minor from a sexual assault by Chris. The existence of a duty of care of a school district toward a student depends, in part, on whether the particular harm to the student is reasonably foreseeable. ***519**(*Leger v. Stockton Unified School Dist., supra,* 202 Cal.App.3d at p. 1459, 249 Cal.Rptr. 688.) Students are not at risk merely because they are at school, and schools, ****681** including school restrooms, are not dangerous places per se. (*Ibid.*) Foreseeability is determined in light of all the circumstances and does not require prior identical events or injuries. (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 502–503, 229 Cal.Rptr. 456, 723 P.2d 573; *Ziegler v. Santa Cruz City High Sch. Dist.* (1959) 168 Cal.App.2d 277, 284, 335 P.2d 709.) "It is not necessary to prove that the very injury which occurred must have been foreseeable by the school authorities.... Their negligence is established if a reasonably prudent person would foresee that injuries of the same general type would be

likely to happen in the absence of [adequate] safeguards." (*Taylor v. Oakland Scavenger Co., supra,* 17 Cal.2d at p. 600, 110 P.2d 1044; see also *Leger v. Stockton Unified School Dist., supra,* 202 Cal.App.3d at p. 1460, 249 Cal.Rptr. 688 [harm reasonably foreseeable from threats of violence known by school authorities even where violence had yet to occur].) Further, "the issue of 'foreseeability' does not depend upon the foreseeability of a particular third party's act, but instead focuses on whether the allegedly negligent conduct at issue created a foreseeable risk of a *particular kind of harm.*" (*Wiener v. Southcoast Childcare Centers, Inc., supra,* 107 Cal.App.4th at p. 1436, 132 Cal.Rptr.2d 883.)FN**

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"The term 'duty' is a conclusory statement which reflects the sum total of policy considerations which leads the law to say a particular plaintiff is entitled to protection against a specific harm. [Citations.] Even though a harm may be foreseeable, ... a concomitant duty to forestall and prevent the harm does not automatically follow. [Citations.] Rather, the question is whether the risk of harm is sufficiently high and the amount of activity needed to protect against harm sufficiently low to bring the duty into existence, a threshold issue of law which requires the court to consider such additional factors as the burdensomeness of the duty on defendant, the closeness of the relationship between defendant's conduct and plaintiff's injury, the moral blame attached to defendant's conduct and plaintiff's injury, and the prevention of future harm." (*Bartell v. Palos Verdes Peninsula Sch. Dist., supra,* 83 Cal.App.3d at pp. 499–500, 147 Cal.Rptr. 898; see also *Wiener v. Southcoast Childcare Centers, Inc., supra,* 107 Cal.App.4th at p. 1436, 132 Cal.Rptr.2d 883.)**

In this case, Earl Warren's gates were unlocked at approximately 7:00 a.m., 45 minutes before scheduled supervision. After 7:00 a.m., student access to the campus was unrestricted until the start of school at 8:15 a.m. The District was admittedly aware that students were on campus between 7:00 a.m. and 7:45 a.m. However, no adult was charged with the specific responsibility of supervising these students in areas on the campus. In short, no one watched these students or the "trouble spots," such as the school bathrooms, during this period. The District in no way advised parents not to bring their children prior to 7:45 a.m. Nor did the District inform the parents of the lack of direct ***520** supervision in the early morning hours. In fact, the minor's mother believed her son was supervised prior to the start of school.

The District schooled special education students and was aware that at least one, the minor, arrived on campus at 7:15 a.m. The District acknowledged that, as a special education and mentally retarded student, the minor had unique vulnerabilities and was susceptible to abuse. The principal of Earl Warren, himself, testified that the sexual abuse of special education students was a concern. The minor complained several times about Chris, who ****682** received over 30 instances of discipline during his two years at Earl Warren. This discipline resulted from grave acts of defiance and inappropriate and violent behavior that included kicking a male student in the groin; throwing food at the principal; calling the yard supervisor a "bitch"; damaging school property; "flipping off" a student; and punching and teasing the minor. Chris received several suspensions from school. This was clearly a troubled child and the District knew it. In addition, even though school personnel did not have a specific recollection of seeing Chris on campus prior to 7:45 a.m., the District was aware that Chris's bus privileges had been suspended, and the principal expected employees to have noticed Chris, particularly given the low number of students on campus in the early morning.

In short, we find it reasonably foreseeable that, given the lack of direct supervision in the early morning hours, a special education student, such as

the minor, was at risk for a sexual or other physical assault. The District's superintendent acknowledged that supervision has a special meaning to educators on the issue of safety and entails observing the person being supervised. This simply did not occur at Earl Warren prior to 7:45 a.m. Given the unique vulnerabilities of special education students, the District knew or reasonably should have known that the minor was subject to the risk of an assault, including a sexual assault, from Chris.

[8] It is not necessary for the District to have foreseen that an act of sodomy could have occurred. We find no distinction between a physical assault and a sexual assault for purposes of foreseeability in this case. (See *Wiener v. Southcoast Childcare Centers, Inc., supra,* 107 Cal.App.4th at pp. 1436–1437, 132 Cal.Rptr.2d 883[FN***] [defendants' alleged negligent conduct in failing to erect sufficient barrier between childhood learning center playground and adjacent street sufficiently likely to result in kind of harm experienced—children being struck by automobile driven on playground—that liability appropriately imposed regardless of whether criminal act of driver was foreseeable]; see also *Claxton v. Atlantic Richfield Co.* (2003) 108 Cal.App.4th 327, 330, 338–339, 133 Cal.Rptr.2d 425 [prior incidents of criminal assaults at gas station that were not racially motivated were sufficiently similar to hate crime to give rise to duty to prevent attack]; cf. ***521***Thompson v. Sacramento City Unified School Dist.* (2003) 107 Cal.App.4th 1352, 1369–1370, 132 Cal.Rptr.2d 748 [no duty of care owed to student injured in fight at school where assailant had threatened to hit another student the day prior, since no foreseeable danger to readily identifiable potential victim].) The fact that a particular act of sodomy in a school bathroom may have been unforeseeable does not automatically exonerate the District from the consequences of allowing students, particularly special education students, unrestricted access to the campus prior to the start of school with wholly inadequate supervision. Such conduct created a foreseeable risk of a particular type of harm—an assault on a special education student. Not only was such an assault reasonably foreseeable, it was virtually inevitable under the circumstances present on this campus.

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When a school district instructs special education children, it takes on the unique responsibilities associated with this instruction and the special needs of these children. Further, the burden on school districts to provide adequate supervision for such students prior to the start of school is minimal. In fact, a school district could satisfy its responsibility merely by precluding students from coming on campus in the early morning hours. Moreover, ****683** there is no additional financial burden placed on school districts to prevent a sexual assault as compared to any other assault. The District's own practice proves our point. Within the District, two other junior high schools required students who arrived early to congregate in a common area supervised by an adult. Unlike here, students were not allowed to roam the campus without any supervision. We are not imposing an unusual or onerous duty upon the District to provide supervision prior to 7:45 a.m. Instead, we are only requiring supervision that other schools within the District have already seen fit to provide on their campuses. This is especially important, given the District's knowledge of the unique factual circumstances in this case.

[9] Given the foreseeability of harm to special education students, the well-settled statutory duty of school districts to take all reasonable steps to protect them, the relatively minimal burden on school districts to ensure adequate supervision for any students they permit on their campuses prior to the start of school, and the paramount policy concern of providing our children with safe learning environments, we find the District owed the minor a duty of care to protect him from an assault on campus. (See *Thompson v. Sacramento City Unified School Dist., supra,* 107 Cal.App.4th at pp. 1364–1365, 132 Cal.Rptr.2d 748 [articulating factors considered in determining whether duty was

owed].)

The District relies on *Romero v. Superior Court, supra,* 89 Cal.App.4th 1068, 107 Cal.Rptr.2d 801 and *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, 46 Cal.Rptr.2d 73 in maintaining it owed the minor no duty to protect him ***522** from a sexual assault by Chris because it had no actual knowledge of Chris's propensity to commit a sexual assault. In *Chaney,* a 23–year–old woman alleged that a close personal family friend sexually assaulted her while she was in his home over many years, beginning when she was 10 years old. The woman filed suit against her alleged assailant and joined the assailant's wife on the theory that she caused the woman to suffer damages by negligently supervising her while she was in the home. (*Id.* at pp. 154–155, 46 Cal.Rptr.2d 73.) In addressing the extent of a wife's duty to her minor invitees to prevent sexual assaults perpetrated by her husband, the court held: "[P]ublic policy requires that where a child is sexually assaulted in the defendant wife's home by her husband, the wife's duty of reasonable care to the injured child depends on whether her husband's behavior was reasonably foreseeable. Without knowledge of her husband's deviant propensities, a wife will not be able to foresee that he poses a danger and thus will not have a duty to take measures to prevent the assault." (*Id.* at p. 157, 46 Cal.Rptr.2d 73.)

The *Chaney* rule was applied in *Romero,* where a 16–year–old boy assaulted a 13–year–old girl while the two were visiting a friend's home. The girl's mother had indicated her desire to the friend's parents that they supervise the teenagers, and the assault occurred when the parents left home for an hour. (*Romero v. Superior Court, supra,* 89 Cal.App.4th at pp. 1073–1075, 107 Cal.Rptr.2d 801.)

> "Prior to the incident, [the 16–year–old boy] had a long history of school misconduct, including sexual harassment of female students, fighting, and other misbehavior that resulted in numerous detentions and suspensions. He had been arrested and charged with vandalism and violating curfew. [One of the friend's parents] was aware of [the boy's] curfew violations, but there [was] no evidence the [parents] knew about the arrests and [the boy's] misconduct ****684** in school." (*Romero v. Superior Court, supra,* 89 Cal.App.4th at p. 1074, 107 Cal.Rptr.2d 801.)

The parents thus had no knowledge of the boy's propensity "to inflict violence on female minors," and they did not know about the existence of his school disciplinary record. (*Romero v. Superior Court, supra,* 89 Cal.App.4th at p. 1087, 107 Cal.Rptr.2d 801.) The girl and her mother sued the parents for negligent supervision and emotional distress. The trial court granted summary judgment as to the emotional distress claim, but found the parents owed a duty of care to the girl and allowed the negligent supervision claim to proceed. (*Id.* at pp. 1075–1076, 107 Cal.Rptr.2d 801.)

In holding that summary judgment should have been granted on the negligent supervision claim, the appellate court reasoned:

> ***23** "We believe ... that sound public policy requires that where one invitee minor sexually assaults another in the defendant's home, the question of whether the defendant owed a duty of reasonable care to the injured minor depends on whether the assailant minor's conduct was *reasonably foreseeable,* but that conduct will be deemed to have been reasonably foreseeable only if the defendant had *actual knowledge* of the assaultive propensities of the teenage assailant. [¶] ... [¶]
>
> "We adopt and apply the *Chaney* duty rule and hold as a matter of law that an adult defendant who assumed a special relationship with a minor by inviting the minor into his or her home will be deemed to have owed a duty of care to take reasonable measures to protect the minor against an assault by another minor invitee while in the defendant's home when the evidence and surrounding circumstances establish that the defendant

had *actual knowledge* of, and thus *must have known*, the offending minor's assaultive propensities. Under the California 'no duty to aid' rule ..., no liability may be imposed on such a defendant for negligent supervision of an injured minor invitee under a nonfeasance theory of liability solely upon evidence that the defendant had *constructive* knowledge or notice of, and thus 'should have known' about, the minor assailant's assaultive propensities.

"Were we to hold otherwise, parents who invite into their homes teenage minors they do not know intimately would face lawsuits and potentially devastating financial liability in tort in the event one invitee minor assaults another under circumstances in which the assaultive propensities of the offending teenager were not known to them. Parents possessing any information suggesting that a teenager that they or their own children may wish to invite into the home may have been involved in physical conduct that resulted, for example, in disciplinary action at school would be required to conduct an investigation in order to protect themselves against potential liability. They would be hampered in their investigative efforts by legitimate and well-established rules of confidentiality regarding juvenile matters." (*Romero v. Superior Court, supra*, 89 Cal.App.4th at pp. 1081, 1083, 107 Cal.Rptr.2d 801.)

The court concluded that, in spite of the special relationship between the parents and the teenage invitees, the parents did not owe a duty of care to supervise the victim at all times during her visit, to warn her, or to protect her against the sexual assault. This was because there was no evidence the parents had prior actual knowledge of the assailant's propensity to sexually assault female minors. (*Romero v. Superior Court, supra*, 89 Cal.App.4th at p. 1080, 107 Cal.Rptr.2d 801.) While ****685** the parents knew the 16–year–old boy before the incident, they never considered him dangerous and thought him polite, helpful and likeable. The parents knew nothing adverse about him other than that he might have had a curfew violation. (*Id.* at p. 1088, 107 Cal.Rptr.2d 801.)

***524** "The circumstantial evidence on which plaintiffs relied included (among other things) [the boy's] school records showing he had a long history of misconduct, including sexual harassment of female students, fighting and other misbehavior that resulted in numerous detentions and suspensions; as well as evidence that [the boy] had been arrested and charged with vandalism. *There is no evidence in the record to show that the [parents] knew about this misconduct.* We conclude the evidence presented by [the girl] was insufficient as a matter of law to show that the [parents] owed her a duty to supervise and protect her from a sexual assault by [the boy] during the short period of time the [parents] were away from home .... [The girl] cites no authority, and we are aware of none, that requires adults to assume that a male teenage invitee will sexually assault a female teenage invitee simply because the adults are away from the house for an hour." (*Romero v. Superior Court, supra*, 89 Cal.App.4th at p. 1088, 107 Cal.Rptr.2d 801, italics added.)

Relying on *Chaney*, the *Romero* court noted that the plaintiffs must allege facts showing that sexual misconduct was foreseeable. (*Romero v. Superior Court, supra*, 89 Cal.App.4th at p. 1089, 107 Cal.Rptr.2d 801.)

"To impose on an adult a duty to supervise and protect a female teenage invitee against sexual misconduct by a male teenage invitee, it is not enough to assert that [it][is] *conceivable* the latter might engage in sexual misconduct during a brief absence of adult supervision. As we have already held, the imposition of such a duty of care requires evidence of facts from which a trier of fact could reasonably find that the defendant adult had prior actual knowledge of the teenage assailant's propensity to sexually molest other minors. [¶] Here, the record is devoid of any such evidence. [The girl] presented no evidence, direct or

> circumstantial, from which the trier of fact could reasonably conclude that the [parents] must have known of [the boy's] history of misconduct at school, his arrests, or his propensity to sexually assault a female minor." (*Romero v. Superior Court, supra,* 89 Cal.App.4th at p. 1089, 107 Cal.Rptr.2d 801, fn. omitted.)

[10] The District implores us to extend the *Romero/ Chaney* rule to this case. We find no authority to support the District's position and decline to adopt it. The public policy reasons surrounding the *Romero/ Chaney* rule do not exist in the context of a school district's supervisory responsibilities. Simply put, the school grounds provide a different setting than an adult's home. And there are differing public policy concerns related to the responsibilities of school districts that provide mandatory education as compared to adults who invite children into their home on a voluntary basis.

School districts are subject to well-established statutory duties mandating adequate supervision for the protection of the students. These affirmative duties arise from the compulsory nature of school attendance, the ***525** expectation and reliance of parents and students on schools for safe buildings and grounds, and the importance to society of the learning activity that takes place in schools. (See *Rodriguez v. Inglewood Unified School Dist., supra,* 186 Cal.App.3d at p. 714, 230 Cal.Rptr. 823.) ****686** These duties are not charged to private homeowners who invite minors into their homes. We therefore conclude that the District owed the minor a duty of care to protect him from the sexual assault.

II.-IV. FN**

FN** See footnote *, *ante*.

DISPOSITION

The judgment is affirmed. Costs are awarded to respondent.

HARRIS, J.

I concur fully in Justice Wiseman's opinion.

I write separately to make further comments as to the existence of the school district's duty toward the minor victim in this case. First, I note that *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 25 Cal.Rptr.2d 137, 863 P.2d 207 and *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 91 Cal.Rptr.2d 35, 989 P.2d 121 address premises liability and are inapplicable to the instant case given the special relationship that exists between a school district and its students.

Second, in my view, even if *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 107 Cal.Rptr.2d 801 was extended to this type of situation, the school district herein would still have a duty toward the minor victim given its actual knowledge of the pertinent factual circumstances in this case. *Romero* held the parents therein had no legal duty to the victim because they had no actual knowledge of the minor's assaultive tendencies or even his school disciplinary record, which included "a long history of misconduct, including sexual harassment of female students, fighting and other misbehavior that resulted in numerous detentions and suspensions; as well as evidence that [the minor] had been arrested and charged with vandalism." (*Id.* at p. 1088, 107 Cal.Rptr.2d 801.) In contrast to *Romero,* however, the school district was well aware of Chris's disciplinary record and his assaultive propensities, his prior interactions with the victim, the victim's repeated complaints about him, and their presence together on campus in the absence of supervision, and it could be held liable for failing to provide that supervision.

***526** Dissenting Opinion of LEVY, J.

The victim in this case suffered grievous harm. Moreover, Chris, the 14–year–old perpetrator, unquestionably had serious behavior problems. However, I cannot agree that it was *reasonably foreseeable* that a student, who had been disciplined primarily for defiant and disruptive behavior, would rape another student while on school grounds. The majority's contrary position expands

the concept of duty to the point of essentially imposing strict liability on school districts for the criminal conduct of any student with a discipline record that includes hitting and kicking other students. This is a clear departure from established California law. Therefore, I respectfully dissent.

As noted by the majority, a school district has a general legal duty to exercise reasonable care in supervising the conduct of the students on school grounds and may be held liable for injuries proximately caused by the failure to exercise such care. (*Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 513, 150 Cal.Rptr. 1, 585 P.2d 851.) The standard imposed on school personnel in carrying out this duty is the degree of care " 'which a person of ordinary prudence, charged with [comparable] duties, would exercise under the same circumstances.' " ****687**(*Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747, 87 Cal.Rptr. 376, 470 P.2d 360.) For example, a school district may be held liable for injuries arising out of students engaging in unsupervised "roughhousing" or "horseplay" on campus during school hours, i.e., the type of behavior one would expect from unsupervised children. (*Dailey v. Los Angeles Unified Sch. Dist., supra,* 2 Cal.3d at p. 751, 87 Cal.Rptr. 376, 470 P.2d 360.) Nevertheless, there are limits on this duty to supervise. A school district is not an insurer of its students' safety. (*Hoyem v. Manhattan Beach City Sch. Dist., supra,* 22 Cal.3d at p. 513, 150 Cal.Rptr. 1, 585 P.2d 851.)

With respect to the district's alleged negligent supervision in the context of this particular incident, the district cannot be held liable for the minor's injuries in the absence of a legal duty to protect its students from sexual assaults perpetrated by other students while on campus. Such a duty exists only if the risk of the particular type of harm was reasonably foreseeable when it occurred. (*Dillon v. Legg* (1968) 68 Cal.2d 728, 739, 69 Cal.Rptr. 72, 441 P.2d 912.) "As a classic opinion states: 'The risk reasonably to be perceived defines the duty to be obeyed.' (*Palsgraf v. Long Island R.R. Co.* (1928) 248 N.Y. 339, 344, 162 N.E. 99 ....) " (*Ibid.*) Moreover, the bare *possibility* that the injury complained of could result from the defendant's acts is insufficient. Through hindsight, everything is foreseeable. (*Hegyes v. Unjian Enterprises, Inc.* (1991) 234 Cal.App.3d 1103, 1133, 286 Cal.Rptr. 85.)

The majority asserts that the district knew or reasonably should have known that the minor was subject to the risk of an assault, including a sexual ***527** assault, from Chris. However, the majority does not adequately explain why this is so. The majority simply focuses on the victim's status. According to the lead opinion, the "unique vulnerabilities of special education students" (lead opn., *ante,* at p. 682) and the "unique responsibilities" associated with their instruction and their "special needs" (*id.* at p. 682) made this particular type of harm, i.e., a sexual assault, foreseeable. The deficiency in this analysis is that no consideration is given to whether it was reasonably foreseeable that another student would commit such a crime. Under California law, a duty to protect the minor from a sexual assault does not exist unless it was reasonably foreseeable that this kind of harm could occur. (*Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1459, 249 Cal.Rptr. 688.)

Although the law generally does not impose a duty on a defendant to control the conduct of another or to warn of such conduct, the special relationship that exists between a school district and its students may impose such a duty. (*Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 712, 715, 230 Cal.Rptr. 823.) However, this duty is not unlimited.

To determine the scope of a school district's duty to control the conduct of one of its students, the California Supreme Court has looked to the common law duty that parents owe third parties to supervise and control the conduct of their children. In *Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 80 Cal.Rptr.2d 811, 968 P.2d 522, the court noted that the relationship between school personnel and students is analogous in many ways

to the relationship between parents and their children. (*Id.* at p. 934, 80 Cal.Rptr.2d 811, 968 P.2d 522.) "At common law, '[s]chool officials are said to stand *in loco parentis,* in the place of parents, to their students, with similar powers and responsibilities.' " (*Id.* at p. 935, 80 Cal.Rptr.2d 811, 968 P.2d 522.)

California law finds a special relationship between parent and child. ****688**(*Hoff v. Vacaville Unified School Dist., supra,* 19 Cal.4th at p. 934, 80 Cal.Rptr.2d 811, 968 P.2d 522.) Accordingly, the parent has a duty to exercise reasonable care to control the minor child so as to prevent the child from intentionally harming others. (*Ibid.*) However, this duty of supervision is limited. The parent's " '[k]nowledge of dangerous habits and ability to control the child are prerequisites to imposition of liability.' " (*Id.* at p. 935, 80 Cal.Rptr.2d 811, 968 P.2d 522.) " '[O]nly the manifestation of specific dangerous tendencies ... triggers a parental duty to exercise reasonable care to control the minor child in order to prevent ... harm to third persons.' " (*Ibid.*)

Applying this analysis here, it is my position that the district cannot be held liable for injuries arising out of this criminal conduct under a theory of negligent supervision unless it had *knowledge* of Chris's "specific dangerous tendencies," i.e., his tendencies to commit sexual assaults. Admittedly, Chris ***528** was a discipline problem. However, defiance and disruption are not indications of such "dangerous tendencies." Further, Chris's prior acts of physical violence, i.e., punching respondent in seventh grade and kicking another student in the groin in eighth grade, would not lead one to reasonably anticipate that he would commit a sexual assault.

In contrast, the majority finds no distinction between a physical assault and a sexual assault for purposes of foreseeability in this case. The majority offers no justification for this position. Apparently, in the majority's view, each type of assault results in the same kind of harm. However, the facts of this case belie this conclusion. Before this sexual assault occurred, the minor had been physically assaulted, i.e., punched by Chris, without any apparent long-term adverse consequences. In contrast, the minor was devastated by this sexual assault. Moreover, if physical assaults and sexual assaults are considered equivalent in this context, school districts will be compelled to view every defiant and disruptive child as a potential rapist. This is an unreasonable burden.

Additionally, contrary to the majority, I consider the analogous situation presented in *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 107 Cal.Rptr.2d 801, to be persuasive. There, the adult defendants were sued for negligent supervision when, after inviting two minors into their home, one was sexually assaulted by the other. The court found that the adults assumed a special relationship with the minors. (89 Cal.App.4th at p. 1081, 107 Cal.Rptr.2d 801.) Nevertheless, the court held that under a nonfeasance theory of negligent supervision, the adults had no duty to protect the injured minor in the absence of *actual knowledge* of the offending minor's propensities. (89 Cal.App.4th at p. 1083, 107 Cal.Rptr.2d 801.)

In reaching this conclusion, the *Romero* court adopted the rule set forth in *Chaney v. Superior Court* (1995) 39 Cal.App.4th 152, 46 Cal.Rptr.2d 73. In *Chaney,* the court was faced with determining the extent of a wife's duty to her minor invitees to prevent sexual assaults perpetrated by her husband. The court noted that the wife's duty of reasonable care to the injured child depends on whether the husband's behavior was reasonably foreseeable. (*Id.* at p. 157, 46 Cal.Rptr.2d 73.) However, "[w]ithout knowledge of her husband's deviant propensities, a wife will not be able to foresee that he poses a danger and thus will not have a duty to take measures to prevent the assault." (*Ibid.*) The court further held that, although a wife's knowledge may be proven by circumstantial evidence, it must reflect the wife's actual knowledge and not merely constructive knowledge or notice. (*Ibid.*) In other

words, such deviant behavior is so shocking and outrageous that, as a matter of law, one cannot be charged with reasonably foreseeing the risk of harm unless one ****689** has actual knowledge of the perpetrator's propensities.

***529** This "actual knowledge" requirement is equally applicable here. Without actual knowledge of Chris's deviant tendencies, the district could not reasonably foresee the danger he posed. The district had no knowledge of Chris's propensity to commit sexual assaults. Before this outrageous incident, there had never been any sexual misconduct at any school in the district for at least 31 years. These circumstances mandate the finding that it was not reasonably foreseeable that this junior high school boy would rape a special education student on school grounds.

The lead opinion dismisses the *Chaney*/*Romero* line of authority on the ground that "school grounds provide a different setting than an adult's home." (Lead opn., *ante*, at p. 685.) The lead opinion further states, without elaboration, that "there are differing public policy concerns related to the responsibilities of school districts that provide mandatory education as compared to adults who invite children into their home on a voluntary basis." (*Ibid.*) However, both school districts and adults who invite children into their homes are acting in loco parentis. Thus, in taking this position, the majority is effectively elevating a school district's duty to exercise reasonable care to control a minor child above that of a parent.

In sum, under these circumstances, the district should not be held liable for the sexual assault perpetrated by one of its students. The district had no knowledge of that student's propensity to commit such an act. Consequently, the district did not owe a legal duty to the minor to protect him from this unforeseeable event. Accordingly, I would reverse the judgment on this ground.

Cal.App. 5 Dist.,2003.

M.W. v. Panama Buena Vista Union School Dist.
110 Cal.App.4th 508, 1 Cal.Rptr.3d 673, 178 Ed. Law Rep. 404, 03 Cal. Daily Op. Serv. 6157, 2003 Daily Journal D.A.R. 7709

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[PLAINTIFFS' COUNSEL LISTED ON SIGNATURE PAGE]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated, Plaintiffs, v. STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION, Defendants.	No. 312236 NOTICE OF PROPOSED SETTLEMENT Department: 210 Judge: Hon. Peter J. Busch Date Action Filed: May 17, 2000 CLASS ACTION

INTRODUCTION

California guarantees an equal education to every student — including the predominantly low-income students and students of color who attend schools that must be improved. This case has been about California's duty to provide these students with instructional materials, safe and decent school facilities, and quality teachers.

Serious and lengthy negotiations conducted by the Office of Governor Arnold Schwarzenegger with dedicated participation by all parties have achieved a settlement in this case that demonstrates the State's commitment to improving the quality of education at low-performing schools.

The settlement implements principles of education reform approved by Governor Schwarzenegger:

> Regarding management and finance, each school should have more authority in defining and determining its own operation and districts should be provided additional statutory and regulatory relief to increase local control. Although total State expenditures may not matter as much as allocation at the local level and improvements can result without additional resources, a key goal should be to maximize resources that reach the classroom in order to enhance student performance.
>
> With respect to school facilities and instructional materials, all schools should be safe and clean. The defendants will prepare a statewide inventory of school facilities to determine the capacity, usage and present physical status of those facilities. Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities.
>
> With respect to instruction and teaching, instructional programs and practices, as well as teacher training and development, should be pedagogically sound, focused on subject matter content and aligned to the State's academic content standards. Every child in California should have access to qualified teachers within the time frame prescribed by the federal No Child Left Behind Act with priority given to providing fully credentialed teachers where most needed.
>
> As to accountability and intervention, each child in California should receive a quality education consistent with all statewide content and performance standards adopted by the State Board of Education, and with a rigorous assessment system and reporting program. Resources provided to high-priority (low-performing) schools should be prioritized to improving the academic performance of the lowest performing students. The State should improve districts with schools that consistently fail to meet academic growth targets, or the goals described above, in order to provide help to those schools and students with the lowest academic performance.

(Letter dated May 14, 2004 from Legal Affairs Secretary Peter Siggins to all counsel at 2, attached as Exhibit B to Declaration of Jack W. Londen ("Londen Decl."))

Plaintiffs, individually and on behalf of the class they represent, seek the Court's preliminary approval of the settlement described in this Notice. Plaintiffs believe that the Settlement Agreement is fair and reasonable, and that, indeed, the class will greatly benefit from the proposed educational reforms to be enacted by the legislation implementing the settlement. Plaintiffs also hereby approval of the parties' agreed process for presenting the settlement for final approval, and a continued stay of the litigation pending final approval.

Defendants, the State of California, the State Board of Education, the State Department of Education, and the State Superintendent of Public Instruction, as well as the Intervenors, the California School Boards Association, the Los Angeles Unified School District, the Long Beach Unified School District, and the San Francisco Unified School District all have joined in the settlement. The parties' signed Settlement Implementation Agreement ("Settlement Agreement") is submitted with this Notice as Exhibit A to the Londen Decl.

I. PROCEDURAL BACKGROUND

A. Litigation History

This case was filed on May 17, 2000 by nearly one hundred California schoolchildren who attended public schools with substandard learning conditions. Plaintiffs brought claims against the State of California, the California Board of Education, the California Department of Education, and the California Superintendent of Schools (collectively "defendants"). Plaintiffs rely on the State's constitutional duty to ensure that all public schoolchildren have equal access to the basic educational tools they need to learn. Plaintiffs alleged that the defendants have failed to meet this duty. As evidence of defendants' failure, plaintiffs alleged that students across the State lacked such basic educational opportunities as textbooks, qualified teachers, and decent facilities. On August 14, 2000, plaintiffs filed a First Amended Complaint ("Complaint"), which added additional plaintiffs and allegations.

On October 1, 2001, the Court certified the case as a class action after extensive briefing, discovery, and presentation of evidence. (Order Granting Motion to Certify a Class.) The class was defined as:

> All students who are attending or will attend public elementary, middle or secondary schools in California who suffer from one or more deprivations of basic educational necessities. The specific deprivations are as follows:
>
> A) a lack of instructional materials such that the student does not have his or her own reasonably current textbook or educational materials, in useable condition, in each core subject (1) to use in class without sharing with another student; or (2) to use at home each evening for homework;
>
> B) a lack of qualified teachers such that (1) the student attends a class or classes for which no permanent teacher is assigned; or (2) the student attends a school in which more than 20% of teachers do not have full, non-emergency teaching credentials; or (3) the student is an English Language Learner ("ELL") and is assigned a teacher who has not been specially qualified by the State to teach ELL students;
>
> C) inadequate, unsafe and unhealthful school facilities such that (1) the student attends classes in one or more rooms in which the temperature falls outside the 65-80 degrees Fahrenheit range; or (2) the student attends classes in one or more rooms in which the ambient or external noise levels regularly impede verbal communication between students and teachers; or (3) there are insufficient numbers of clean, stocked and functioning toilets and bathrooms; or (4) there are unsanitary and unhealthful conditions, including the presence of vermin, mildew or rotting organic material;
>
> D) a lack of educational resources such that (1) the school offers academic courses and extracurricular offerings in which the student cannot participate without paying a fee or obtaining a fee waiver; or (2) the school does not provide the student with access to research materials necessary to satisfy course instruction, such as a library or the Internet; or
>
> E) overcrowded schools such that (1) the student is subject to a year-round, multi-track schedule that provides for fewer days of annual instruction than schools on a traditional calendar provide; or (2) the student is bused excessive distances from his or her neighborhood school; or (3) the student attends classes in one or more rooms that are so overcrowded that there are insufficient seats for each enrolled student to have his or her own seat or where the average square footage per student is less than 25 square feet.

(Memorandum of Points and Authorities in Support of Motion for Class Certification at 3-4.)

B. Settlement Process and History

On October 22, 2001, the Court ordered the parties to engage in settlement negotiations, recommending that the Honorable Patrick J. Mahoney act as mediator. (Pretrial Scheduling Order dated Oct. 22, 2001.) Judge Mahoney held mediation sessions on December 17, 2001, January 3, 2002, January 16, 2002, January 26, 2002, and January 31, 2002. (Londen Decl. at ¶ 6.) During these sessions, lead counsel for the parties were present and negotiations generally

lasted the entire day. (*Id.*) When it appeared that progress toward settlement was possible, the parties agreed to stay the litigation. (*Id.*)

On February 1, 2002, the Court ordered a stay of the litigation to allow the parties an opportunity to focus exclusively on mediation. (*Id.* at ¶ 7.) Over the following seven months, the parties continued to attend mediation sessions with Judge Mahoney. (*Id.*) The parties met on: February 22, 2002, March 1, 2002, April 8, 2002, April 17, 2002, May 20, 2002, June 24, 2002, July 12, 2002, August 9, 2002, and August 29, 2002. (*Id.*) The parties negotiated vigorously, prepared lengthy submissions to the mediator responding to his questions, and exchanged multiple settlement proposals. (*Id.*) The parties also held many discussions regarding settlement among the entire group and among subsets of the group. (*Id.*) Ultimately, however, the parties were unable to reach agreement on settlement and decided to return to litigation in October, 2002. (*Id.*)

While litigation continued at a fast pace, the parties agreed to continue mediation discussions with Judge Mahoney in the Spring of 2003. (*Id.* at ¶ 8.) There were mediation sessions with Judge Mahoney on March 3, 2003, June 2, 2003, June 18, 2003, August 1, 2003, and September 5, 2003. (*Id.*) In addition to the in-person meetings, the parties also engaged in extensive telephonic meetings both among the entire group and among subsets of the group whom Judge Mahoney brought together. (*Id.*) In September, Judge Mahoney asked that a representative for plaintiffs and for the State meet with him without counsel's participation in an effort to advance the settlement process. (*Id.*) The parties had chosen designees and arranged a time to meet with Judge Mahoney, but, before that meeting took place, Governor Arnold Schwarzenegger was voted into office. (*Id.*) The parties postponed pending settlement discussions until the new administration had an opportunity to review the substance and status of the litigation. (*Id.*) On November 24, 2003, at the request of the parties, the Court ordered another stay of the litigation again to focus on settlement. (*Id.*)

With the approval of Judge Mahoney, plaintiffs accepted the invitation of the Office of Governor Schwarzenegger to negotiate directly. (*Id.* at ¶ 9.) From the start, the new administration manifested a determination to deal with problems in public education and to settle

this litigation. (*Id.*) During the discussions, the administration's team included senior officials in the Office of the Governor with regular direct supervision by Governor Schwarzenegger, himself. (*Id.*)

In May, the Governor's Legal Affairs Secretary notified counsel for the parties that these discussions had progressed to the point where an agreement to resolve the litigation was possible and within reach. (*Id.* at ¶ 10.) His letter set forth Governor Schwarzenegger's principles of educational reform, which the parties agreed would form the basis for legislative solutions to specific problems facing California schools. (*Id.* & Letter dated May 14, 2004 from Peter Siggins to all counsel at 2 attached as Exhibit B.) Throughout May and June, the parties held settlement meetings in which they continued to discuss various proposals that would further the Governor's principles. (*Id.*)

On June 30, 2004, counsel for all parties appeared before this Court for a status conference regarding the parties' efforts to settle this case. (*Id.* at ¶ 11.) The parties reported on their work together to draft proposals for legislation on the substantive issues raised by plaintiffs' case. (*Id.*) The parties further reported that, on several issues, the proposals had reached the stage that plaintiffs' counsel could recommend to the plaintiff class representatives that the proposals should be the basis for a settlement. (*Id.*) At that time, other issues were the subject of continuing negotiations that were being conducted in the Governor's office by his Legal Counsel with plaintiffs' counsel, counsel for the intervenors, and counsel for the State Agency defendants. (*Id.*) The parties agreed to keep Judge Mahoney apprised of the status of the proposals and, if necessary, to submit the outstanding issues to the Court for further discussion and resolution. (*Id.*)

The parties continued to negotiate after the status conference, meeting many times and circulating numerous drafts. (*Id.* at ¶ 12.) Settlement negotiations were attended by lead counsel, negotiations were vigorous, and proposals were thoroughly analyzed and debated. (*Id.*) Counsel for all parties worked hard to advocate for their clients' positions on how best to improve California's schools. (*Id.*) In late July, the State's counsel presented the parties with the State's final proposal for settling the case. (*Id.*) This proposal provides benefits to the class that far

exceed those that the State had agreed to previously. (*Id.*) The intervenors' advocacy for increased funding to support education reform strongly benefited the class. (*Id.*) In addition, LAUSD, in particular, has committed significant effort and resources to expanding its facilities capacity in order to phase out the use of Concept 6. (*Id.*) All of the school districts and the California School Boards Association should be commended for their dedication to improving the schools on behalf of the children in their care. (*Id.*)

In late July and early August, counsel for plaintiffs spoke with nine of the class representatives about the Settlement Agreement.[1] (*Id.* at ¶ 13.) Counsel explained the settlement terms and the settlement process, and discussed why they believed the settlement to be a fair and reasonable resolution of the case. (*Id.*) All of the available class representatives approve the proposed settlement and have authorized plaintiffs' counsel to move forward with the proposed agreement. (*Id.*)

II. TERMS OF THE PROPOSED SETTLEMENT

The Settlement Agreement provides for a package of legislative proposals to ensure that all students will have books and that their schools will be clean and safe. (*Id.*) It takes steps toward assuring they have qualified teachers. (*Id.*) The legislative proposals would create measures to confirm that schools are delivering these fundamental elements to students, and provide very substantial funding for these purposes: a program to authorize districts to spend up

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[1] Plaintiffs' counsel have discussed settlement with Cindy Diego; Lizette Ruiz; the guardians for Moises Canel; the guardian for Krystal Ruiz; Manuel Ortiz and his guardian; the guardian for Carlos and Richard Ramirez; and D'Andre Lampkin, Delwin Lampkin, and their guardian. (Londen Decl. at ¶ 13.) Plaintiffs' counsel have been unable to schedule meetings with Silas Moultrie and Samuel and Jonathan Tellechea, or their guardians. (*Id.* at ¶ 14.) Plaintiffs' counsel recently notified these individuals regarding the possibility of settlement and intend to continue efforts to reach them in person. (*Id.*) Plaintiffs' counsel also have sent a letter to their last known address notifying them of the Settlement Agreement. (*Id.*) In addition, plaintiffs' counsel has been informed by the guardian for Carlos Santos, Marcelino Lopez, that he does not feel comfortable discussing the details of the Settlement Agreement because he is now a member of the Ravenswood District school board, and lawyers for the district have advised him that there is an appearance of a conflict. (*Id.*) Accordingly, he has stated that he trusts that counsel will do what is right for the class and approves of settlement. (*Id.*)

to $800 million over a period of years for repairs of emergent facilities conditions in the lowest performing schools (those ranked in the bottom 3 deciles under the statewide Academic Performance Index [API]); $138.7 million for new instructional materials for students attending schools in the bottom two API deciles, in additional to the funding for instructional materials to all schools; and $50 million to conduct an assessment of facilities conditions, supplement the County Superintendents' capacity to oversee low performing schools, fund emergency repairs in those schools, and cover other costs of implementation. (*Id.*) The legislative proposals also include extending funding of at least $200 million for the High Priority Schools Grant Program (HPSGP) at current HPSGP and Immediate Intervention/Underperforming Schools Program (II/USP) levels and by appropriating savings achieved as low performing schools are phased out of the program to new grants for eligible schools. (*Id.*)

The settlement's implementing legislation is to:

- Provide financial assistance to repair low performing schools through a new $800 million School Facilities Emergency Repairs Account;
- Create a School Facilities Needs Assessment program;
- Create standards for instructional materials and facilities, and require the Concept 6 (shortened school year) calendar be eliminated no later than 2012;
- Post instructional materials and facilities standards in all classrooms;
- Collect data on compliance with these standards, and teacher requirements;
- Verify this data;
- Require a uniform complaint process in every district for complaints on inadequate instructional materials, teacher vacancies and misassignments, and emergency facilities problems;
- Intervene in decile 1-3 schools if the instructional materials and facilities standards are not met, and in districts having difficulty attracting, retaining or properly assigning teachers;
- Improve the teacher supply by streamlining requirements for out-of-state credentialed teachers to earn California credentials;
- Require each district to implement a facilities inspection system; and
- Include new schools in the High Priority Schools Grant Program when current schools are phased out.

(*Id.* at ¶ 2 & Exhibit A.)

The 2004-05 State budget includes funding for some of the financial terms of the settlement by including $138.7 million for new instructional materials in decile 1-2 schools and $50 million to implement other settlement goals. (*Id.* at ¶ 3.) The budget also maintains the instructional materials categorical program, with funding for this year of $363 million before the addition of the new instructional materials funding for decile 1 and 2 schools. (*Id.*)

III. THE PROPOSED SETTLEMENT MORE THAN SATISFIES THE STANDARDS FOR PRELIMINARY APPROVAL.

A. The Proposed Settlement Is Fair and Within the Range of Possible Final Approval.

Pursuant to California Rule of Court 1859(c), "[a]ny party to a settlement agreement may submit a written notice of motion for preliminary approval of the settlement." Cal. Rule of Ct. 1859(c). In ruling on class action settlements, this Court has broad discretion to determine whether the settlement proposed by the parties is fair and reasonable. *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979).

The procedure for obtaining court approval of a class action settlement consists of three steps:

1. Preliminary approval of the proposed settlement at an informal hearing;
2. Dissemination of notice of settlement to the class; and
3. A final settlement approval hearing, at which class members may be heard regarding the settlement, and at which the parties present evidence concerning the fairness, adequacy, and reasonableness of the settlement. *See* Cal. Rule of Ct. 1859; *Manual for Complex Litigation Third* (1995) at § 30.41; *see also* 4 Newberg on Class Actions 4th (2002) §§ 11.24, *et seq.*

In making a decision to grant preliminary approval, the Court must "evaluate the proposed settlement agreement with the purpose of protecting the rights of absent class members who will be bound by the settlement." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)). It must "scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating

parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* (citations and internal quotations omitted). "If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies . . . and appears to fall within the range of possible approval," the standard for preliminary approval is satisfied, and the Court should move to the step of approving notice to the class. *Manual for Complex Litigation* at § 30.41; *see also Dunk*, 48 Cal. App. 4th at 1802. Courts have held that approving dissemination of notice to the class "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *See, e.g., In re Traffic Executive Association-Eastern Railroads*, 627 F.2d 631, 634 (2d Cir. 1980).

Finally, the settlement is presumed fair where: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal App. 4th at 1802 (citations omitted). The Settlement Agreement before this Court fully satisfies these requirements.

As discussed in more detail above, the settlement was the product of extensive and hard-fought adversarial negotiations by experienced counsel. (Londen Decl. at ¶¶ 15-28.) An experienced and well-respected Judge of the Superior Court served for years as a neutral mediator. (Londen Decl. at ¶ 5; Statement of Mediation Judge (to be submitted to the Court).) The parties engaged in discovery and motion practice. (Londen Decl. at ¶5.) Discovery was aggressive and hotly contested, and continued during and even following the parties' mediation efforts. (*Id.*)

Plaintiffs' experienced counsel and the Mediation Judge believe that this settlement represents a very favorable resolution of plaintiffs' claims. (Londen Decl. at ¶ 2; Statement of Mediation Judge (to be submitted to the Court).) The Mediation Judge has reviewed the terms of the proposed settlement and says: "[The settlement] represents a major advancement in services that the State previously had been willing to provide to the class." (Statement of the Mediation Judge (to be submitted to the Court).) He concludes: "I commend the parties and counsel for

their good faith efforts in reaching this settlement. It represents a significant step forward and is a thoughtful resolution of this complex case." (*Id.*)

B. The Parties' Proposed Schedule for Providing Notice and Holding A Final Hearing Serves the Best Interests of the Class.

The settling parties have agreed to seek the enactment of the legislation set forth in the Settlement Agreement. (*See* Londen Decl. at ¶ 4 & Exhibit A.) The parties will keep the Court apprised of the status of the legislation. (*Id.* at ¶ 4.) Since the settlement depends upon the provisions being enacted into law in substantial conformity with the legislative proposals, the exact content of the notice to the class will depend on the results of the legislative process. (*Id.*) Thus, plaintiffs propose to submit, after enactment of the legislation, a motion for approval of the content, form, and manner of giving notice to the class, and for approval of a schedule for comment by class members, submissions by the parties, and a final approval hearing. (*Id.*)

CONCLUSION

The goals pursued in this case deserve, and have received, an enormous investment of time and energy from all parties and all counsel. The parties have reached an outcome reflecting compromise, but we believe that the proposed settlement is more than a fair and reasonable compromise. It is a significant achievement on the part of all settling parties. We expect that the enactment and implementation of the settlement will greatly improve California's public schools.

Plaintiffs respectfully request the Court to grant preliminary approval of the proposed settlement and enter the proposed Order submitted with this motion.

Dated: August 13, 2004

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION,

Defendants.

No. 312236

DECLARATION OF JACK W. LONDEN

Department: 210
Judge: Hon. Peter J. Busch
Date Action Filed: May 17, 2000

CLASS ACTION

I, JACK W. LONDEN, declare as follows:

1. I am a partner in Morrison & Foerster LLP, and a member of the State Bar of California. I make this declaration in support of Plaintiffs' Notice of Settlement, to show that (1) plaintiffs' counsel have sufficient expertise in litigation of this sort to recommend to the class that the proposed settlement is a very favorable resolution of plaintiffs' claims; and (2) the settlement was the product of extensive and hard-fought adversarial negotiations.

The Proposed Settlement

2. I believe the proposed Settlement Agreement represents a very favorable resolution of plaintiffs' claims. The settlement's implementing legislation is to:

- Provide financial assistance to repair low performing schools through a new $800 million School Facilities Emergency Repairs Account;
- Create a School Facilities Needs Assessment program;
- Create standards for instructional materials and facilities, and require the Concept 6 (shortened school year) calendar be eliminated no later than 2012;
- Post instructional materials and facilities standards in all classrooms;
- Collect data on compliance with these standards, and teacher requirements;
- Verify this data;
- Require a uniform complaint process in every district for complaints on inadequate instructional materials, teacher vacancies and misassignments, and emergency facilities problems;
- Intervene in decile 1-3 schools if the instructional materials and facilities standards are not met, and in districts having difficulty attracting, retaining or properly assigning teachers;
- Improve the teacher supply by streamlining requirements for out-of-state credentialed teachers to earn California credentials;
- Require each district to implement a facilities inspection system; and
- Include new schools in the High Priority Schools Grant Program when current schools are phased out.

Attached to my declaration as Exhibit A is a true and correct copy of the parties' signed Settlement Implementation Agreement ("Settlement Agreement"). The agreement includes the parties' legislative proposals, a Covenant Not To Sue, and a provision regarding attorneys fees.

3. The 2004-05 State budget includes funding for some of the financial terms of the settlement by including $138.7 million for new instructional materials in decile 1-2 schools and $50 million to implement other settlement goals. The budget also maintains the instructional materials categorical program, with funding for this year of $363 million before the addition of the new instructional materials funds.

Notice of the Proposed Settlement

4. The parties have agreed to seek the enactment of legislation proposals attached to the Settlement Agreement. The parties will keep the Court apprised of the status of the legislation. Since the settlement depends upon the provisions being enacted into law in substantial conformity with the legislative proposals, the exact content of the notice to the class will depend on the results of the legislative process. After enactment of the legislation, plaintiffs will submit a motion for approval of the content, form, and manner of giving notice to the class, and for approval of a schedule for submission of comments by class members, submissions by the parties, and a final approval hearing.

Negotiation of the Settlement

5. The parties' Settlement Agreement has been the product of extensive, hard-fought negotiations among plaintiffs, defendants, and the intervenors. Settlement negotiations began nearly three years ago with the Honorable Patrick J. Mahoney, an experienced and well-respected Judge of the Superior Court. During that time, the parties have engaged in extensive discovery and motion practice. Discovery was aggressive and hotly contested.

6. On October 22, 2001, this Court ordered the parties to engage in settlement negotiations and recommended that Judge Mahoney act as mediator. Mediation sessions with Judge Mahoney were held on December 17, 2001, January 3, 2002, January 16, 2002, January 26, 2002, and January 31, 2002. During these sessions, lead counsel for the parties were present and negotiations generally lasted the entire day. (*Id.*) When it appeared that progress toward settlement was possible, the parties agreed to stay the litigation.

7. On February 1, 2002, the Court ordered a stay of the litigation to allow the parties an opportunity to focus exclusively on mediation. Over the following seven months, the parties

continued to attend mediation sessions with Judge Mahoney. The parties met on: February 22, 2002, March 1, 2002, April 8, 2002, April 17, 2002, May 20, 2002, June 24, 2002, July 12, 2002, August 9, 2002, and August 29, 2002. The parties negotiated vigorously, prepared lengthy submissions to the mediator responding to his questions, and exchanged multiple settlement proposals. The parties also held many discussions regarding settlement among the entire group and among subsets of the group. Ultimately, however, the parties were unable to reach agreement on settlement and decided to return to litigation in October, 2002.

8. While litigation continued at a fast pace, the parties agreed to continue participating in mediation discussions with Judge Mahoney in the Spring of 2003. The parties attended mediation sessions with Judge Mahoney on March 3, 2003, June 2, 2003, June 18, 2003, August 1, 2003, and September 5, 2003. In addition to the in-person meetings, the parties also engaged in extensive telephonic meetings both among the entire group and among subsets of the group whom Judge Mahoney brought together. In September, Judge Mahoney asked that a representative for plaintiffs and for the State meet with him without counsel's participation in an effort to advance the settlement process. The parties had chosen designees and arranged a time to meet with Judge Mahoney, but, before that meeting took place, Governor Arnold Schwarzenegger was voted into office. The parties postponed pending settlement discussions until the new administration had an opportunity to review the substance and status of the litigation. On November 24, 2003, at the request of the parties, the Court ordered another stay of the litigation so that the parties could again focus on settlement.

9. With the approval of Judge Mahoney, plaintiffs accepted the invitation of the Office of Governor Schwarzenegger to negotiate directly. From the start, the new administration manifested a determination to deal with problems in public education and to settle this litigation. During the discussions, the administration's team included senior officials in the Office of the Governor with regular direct supervision by Governor Schwarzenegger, himself.

10. In May, the Governor's Legal Affairs Secretary notified counsel for the parties that these discussions had progressed to the point where an agreement to resolve the litigation was possible and within reach. His letter set forth Governor Schwarzenegger's principles of

educational reform, which the parties agree would form the basis for legislative solutions to specific problems facing California schools. Attached to my declaration as Exhibit B is a true and correct copy of this letter. Throughout May and June, the parties held settlement meetings in which they continued to discuss various proposals that would further the Governor's principles.

11. On June 30, 2004, counsel for all parties appeared before this Court for a status conference regarding the parties' efforts to settle this case. The parties reported that they had been working together to draft proposals for legislation on the substantive issues raised by plaintiffs' case. The parties further reported that on several of those issues, the proposals had reached the stage that plaintiffs' counsel could recommend to the plaintiff class representatives that the proposals should be the basis for a settlement. At that time, other issues were the subject of continuing negotiations that were being conducted in the Governor's office by his Legal Counsel with plaintiffs' counsel, counsel for the intervenors, and counsel for the State Agency defendants. The parties agreed to keep Judge Mahoney apprised of the status of the proposals and, if necessary, to submit the outstanding issues to the Court for further discussion and resolution.

12. The parties continued to negotiate after the status conference, meeting many times and circulating numerous drafts. Settlement negotiations were attended by lead counsel, negotiations were vigorous, and proposals were thoroughly analyzed and debated by all parties. Counsel for all parties worked hard to advocate for their clients' positions on how best to improve California's schools. In late July, the State's counsel presented the parties with the State's final proposal for settling the case. This proposal provides benefits to the class that far exceed those that the State had agreed to previously. The intervenors' advocacy for increased funding to support education reform also strongly benefited the class. In addition, LAUSD, in particular, has committed significant effort and resources to expanding its facilities capacity in order to phase out the use of Concept 6. All of the school districts and the California School Boards Association should be commended for their dedication to improving the schools on behalf of the children in their care.

13. In late July and early August, counsel for plaintiffs spoke with nine of the class representatives about the Settlement Agreement. Plaintiffs' counsel have discussed settlement

with Cindy Diego; Lizette Ruiz; the guardians for Moises Canel; the guardian for Krystal Ruiz; Manuel Ortiz and his guardian; the guardian for Carlos and Richard Ramirez; and D'Andre Lampkin, Delwin Lampkin, and their guardian. Counsel explained the settlement terms and the settlement process, and discussed why they believed the Settlement Agreement to be a fair and reasonable resolution of the case. All of the available class representatives approve the proposed settlement and have authorized plaintiffs' counsel to move forward with the Settlement Agreement.

14. Plaintiffs' counsel have been unable to schedule meetings with Silas Moultrie and Samuel and Jonathan Tellechea, or their guardians. Plaintiffs' counsel recently notified these individuals regarding the possibility of settlement and intend to continue efforts to reach them in person. Plaintiffs' counsel also have sent a letter to their last known address notifying them of the Settlement Agreement. In addition, plaintiffs' counsel has been informed by the guardian for Carlos Santos, Marcelino Lopez, that he does not feel comfortable discussing the details of the Settlement Agreement because he is now a member of the Ravenswood District school board, and lawyers for the district have advised him that there is an appearance of a conflict. Accordingly, he has stated that he trusts that counsel will do what is right for the class and approves of settlement.

Experience of Plaintiffs' Counsel

15. Plaintiffs' counsel in this case consist of a coalition of civil rights organizations, public interest law groups, and private lawyers. Lead counsel are the ACLU Foundation of Southern California, the ACLU Foundation of Northern California, Public Advocates, the Mexican American Legal Defense Fund (MALDEF), and Morrison & Foerster. The lawyers responsible for handling the case at these organizations have extensive experience litigating similar cases and have the background and expertise to make the determination that the proposed settlement is a fair and reasonable resolution of the claims brought by plaintiffs. I highlight the experience and expertise of counsel in the following paragraphs.

ACLU Foundation of Southern California

16. Attorneys at the ACLU Foundation of Southern California (ACLU-SC) who have represented the class include Mark Rosenbaum, Catherine Lhamon, and Peter Eliasberg, among others.

17. Mark Rosenbaum is the legal director of the ACLU-SC. He has been an attorney with the ACLU since January 1974 and legal director since 1994. He is an experienced counsel in the areas of constitutional and civil rights law. For thirty years, he has litigated cases raising novel and complex constitutional and civil rights claims, including in the areas of disability rights, health care, education, and social services. Mr. Rosenbaum also has extensive experience litigating class action cases and other cases involving educational equity and civil rights, including the following: *Crawford v. Board of Education* (Los Angeles school desegregation case), *Rodriguez v. Board of Education* (case regarding inequitable distribution of resources to inner city students and unequal educational opportunities), *Serna v. Eastin* (case regarding inadequate education, lack of textbooks, and deficient facilities at schools in Compton), *Smith v. Board of Education* (case regarding lack of special education services for learning and emotional disabilities in Los Angeles School District), *Tinsley v. Palo Alto School District* (metropolitan desegregation case), and *Katie A. v. Bonta* (case regarding provision of mental health services to foster children in Los Angeles).

18. Catherine Lhamon is a staff attorney at ACLU-SC with experience in civil rights matters, including educational equity issues. Ms. Lhamon has worked at the ACLU-SC since 1999 focusing the majority of her time on *Williams v. State of California.* Prior to working on this case, she co-counseled with Mark Rosenbaum on *Molina v. Los Angeles City Board of Education et al.* (class action suit regarding inequitable access to school facilities). Peter Eliasberg is the managing attorney of the ACLU-SC, and has also been involved in a number of class action civil rights cases, including *Beauchamp, et al. v. Los Angeles County Mass Transit Authority* (case involving disability issues), *Miles et al. v. County of Los Angeles* (case involving disability issues), and *Daniel v. State of California* (unequal access to AP classes).

Public Advocates

19. Attorneys at Public Advocates who have represented the class include John Affeldt and Jenny Pearlman.

20. John Affeldt has acted as senior counsel for the class at Public Advocates, Inc. Mr. Affeldt is the legal director of Public Advocates and has been an attorney with Public Advocates since 1991. At Public Advocates he has focused on educational equity issues, including working on a case that challenged the California Basic Educational Skills Test and a case that challenged of the use of IQ tests with African American school children. Mr. Affeldt also acted as lead counsel in Public Advocates' *Yvetter Doe v. Belshe* and *LCHC v. Belshe* litigation, which halted the State's denial of prenatal emergency medical care to tens of thousands of undocumented immigrant residents.

MALDEF

21. Attorneys at MALDEF who have represented the class include Thomas Saenz and Hector Villagra. Thomas Saenz and Hector Villagra are, respectively, the Vice President of Litigation and Los Angeles Regional Counsel at MALDEF. Mr. Saenz has worked at MALDEF since 1993 and Mr. Villagra has worked at MALDEF since 1996.

22. Mr. Saenz has served as counsel in numerous civil rights cases, involving such issues as affirmative action, educational equity, employment discrimination, immigrants' rights, and language rights. He served as MALDEF's lead counsel in successfully challenging California's Proposition 187 in court, presenting extensive written and oral arguments on numerous occasions in three different cases involving the anti-immigrant initiative. Mr. Villagra has served as counsel in numerous civil rights cases involving such issues as educational equity, employment discrimination, and language rights. Mr. Villagra was also MALDEF's lead counsel in the successful challenge to the distribution of Proposition 1A funds.

ACLU Foundation of Northern California

23. Alan Schlosser has acted as senior counsel for the class at the ACLU of Northern California. He is the legal director of the ACLU Foundation of Northern California. Mr. Schlosser has been at the ACLU Foundation of Northern California since 1976 and legal director since 2000. Mr. Schlosser has litigated a wide array of class action, civil rights and civil liberties

cases in state and federal courts, including the following: *International Molders Union v. U.S. Immigration & Naturalization Service* (class action challenge to INS practices), *Brown v. Jordan* (class action for damages on behalf of persons arrested ruing Rodney King verdicts); *Lazenby v. City of Vallejo* (class action challenge to law enforcement searches of home of welfare recipients), and *Golden Gateway Center v. Golden Gateway Tenants Association* (action involving challenge to free speech).

Morrison & Foerster

24. Morrison & Foerster LLP is a large international law firm that has for many years maintained one of the most extensive pro bono public interest law practices of any private law firm. This action has been the largest pro bono case in our history in terms of resources committed. Our legal team has spent over 73,000 hours on this case.

25. Michael Jacobs and I have acted as the managing partners of this case on behalf of Morrison & Foerster. In addition to Mr. Jacobs and me, the Morrison & Foerster team representing the class includes: Matt Kreeger, Anthony Press, Michael Feuer, Leecia Welch, and, at various points in the case, nearly twenty associates, legal assistants, and other support staff. Morrison & Foerster has undertaken this case as part of its commitment to rendering *pro bono* legal services. Our firm has an active and well-supported *pro bono* program, which has for at least fifteen years included a focus on issues affecting children, and education in particular. Morrison & Foerster was one of counsel for the plaintiffs in *Butt v. State of California*, including the appellate proceedings resulting in the opinion reported at 4 Cal. 4th 668, 688 (1992).

26. I associated with Morrison & Foerster in 1980, and became a partner of the firm in 1984. I have been involved in a general litigation practice for more than twenty years, including complex civil rights cases and class actions. I have been involved in a number of class actions on both the plaintiff and defendants' sides. I have also been involved in previous *pro bono* cases on conditions in public schools. Among other cases, beginning in 1991, my partner, Matthew Kreeger and I served as counsel to a certified plaintiff class of Latino students in a federal desegregation case, *Vasquez v. San Jose Unified School District,* Civil No. 71-2130 RMW

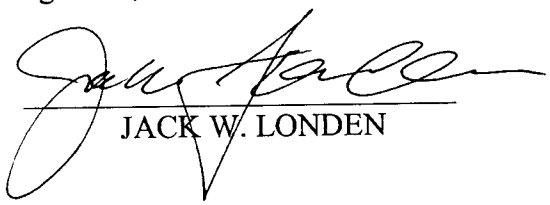
(Northern District of California). Our work in that case has included litigation and negotiation that resulted in a comprehensive Remedial Order, which was approved by the Court in 1994.

27. Mr. Jacobs joined Morrison & Foerster in 1983 and is a partner in its San Francisco office. He served as co-head of the firm's 140-person Intellectual Property Group since its founding in 1990 until February 2003. He also served as the firm's worldwide Managing Partner for Operations from 1995 to 1997.

Other Co-counsel

28. In addition to the attorneys listed above, other cooperating co-counsel listed on the pleadings have provided expertise in issues relating to civil rights, public education, and class action advocacy throughout the litigation. The class has been ably represented by counsel with a range of experience and expertise in similar cases.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 12, 2004 in San Francisco, California.



JACK W. LONDEN

EXHIBIT A

SETTLEMENT IMPLEMENTATION AGREEMENT

It is hereby agreed among the Defendants (the State of California, the State Board of Education, the Superintendent of Public Instruction, and the State Department of Education), the plaintiff class representatives ("Plaintiffs"), and the undersigned Intervenors (the "Settling Intervenors") (collectively, the "Settling Parties") in *Williams v. State of California*, Case Number 312236 in the Superior Court in and for the City and County of San Francisco ("the Action") that:

1. Promptly after the Settling Parties execute this Settlement Agreement, Plaintiffs (or, at the State's option, the State and Plaintiffs jointly) shall file a Notice of Settlement. The Notice of Settlement will describe the terms of the settlement; seek the Court's preliminary approval of the settlement; provide a procedure for giving notice to the members of the Plaintiffs' class and seek approval to proceed according to the process established in this Settlement Agreement, including a continued stay of the litigation, pending final court approval. Plaintiffs' counsel shall circulate the Notice of Settlement to the Settling Parties for their review and comment before the Notice is filed with the Court. Upon execution of this Settlement Agreement, Defendant State of California will file a notice of dismissal without prejudice of its cross-complaint in the Action (the "Cross Complaint").

2. The Settling Parties agree to engage in good faith efforts to obtain the enactment of legislation that implements the legislative proposals attached to this Settlement Agreement (the "Legislative Proposals") during the current legislative session and, to the extent that goal is not attained, as soon as possible thereafter. Consistent with this commitment, the Settling Parties also agree that they will not advocate or support any

legislative measures relating to the Legislature's consideration of the proposed legislation to implement the settlement which do not substantially conform to the Legislative Proposals. A legislative measure does not "Substantially Conform" to the Legislative Proposals if it: (1) is inconsistent with the language and intent of the Legislative Proposals, including all duties, limitations, and deadlines set forth therein; or (2) contains any revisions or modifications that add significant costs or cost pressures.

3. No later than October 15, 2004, Plaintiffs shall notify the Defendants and the Settling Intervenors whether they agree that the legislation that has been enacted by the Legislature in 2004 and signed by the Governor (the "2004 Legislation") Substantially Conforms to the Legislative Proposals, which agreement shall not unreasonably be withheld. If Plaintiffs agree that the 2004 Legislation Substantially Conforms, they shall promptly submit a motion for final approval of the settlement and dismissal of the Action as provided in this Settlement Agreement.

4. In the event that Plaintiffs, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education, or any of the Settling Intervenors believe that the 2004 Legislation does not Substantially Conform to the Legislative Proposals, they shall engage in consultation (as described in paragraph 7 below), giving written notice to all Settling Parties of the alleged deficiencies and providing the State with an opportunity to cure any alleged shortcoming by any means available, including fiscal, programmatic, or administrative solutions. The State may give notice of the intention to seek enactment of the substance of the Legislative Proposals during the 2005 legislative session; and if so, Plaintiffs shall await the outcome of the efforts to enact the proposals during 2005. If Plaintiffs, the State Board of Education, the Superintendent of

Public Instruction, or any of the Settling Intervenors contend that what has been enacted during the 2005 legislative session (the "2005 Legislation") does not substantially conform to the Legislative Proposals then, after consultation, they may apply to the Court for leave to withdraw from the Settlement Agreement based on a showing of substantial and material differences between the 2004 Legislation/2005 Legislation and the Legislative Proposals.

5. In the event the Court grants final approval of the settlement:

a. The Action shall be dismissed without prejudice; and Plaintiffs and, subject to approval by the Court pursuant to Cal. Civ. Proc. §581(k), members of the Plaintiffs' class shall be bound by the separate Covenant Not To Sue which is, by this reference, incorporated into and made a part of this Settlement Agreement.

b. Defendant State of California will file a notice of dismissal with prejudice of the Cross Complaint.

c. The Settling Intervenors will file notices of dismissal without prejudice of their complaints in intervention in the Action.

d. As consideration for the Settling Parties' execution of this Agreement, there shall be no application for an award of attorneys' fees or costs to be paid by any party, except as provided in the separate Provision As To Claims for Attorneys' Fees agreed between the State and plaintiffs. Settling Intervenors shall have no liability for any fees or costs related to or arising from the Action.

6. Any dismissal and any covenant not to sue that applies to members of the Plaintiff class shall be subject to Court review pursuant to Cal. Civ. Proc. §581(k). In the event of disapproval by the Court at any stage of such proceedings, the Settling Parties

shall meet and confer in the attempt to correct any deficiencies. This Settlement Agreement shall not be enforceable after a final order declining to approve the settlement.

7. Plaintiffs, Defendants and Settling Intervenors agree to engage in consultation with each other before taking an action that could provoke a reasonable objection based on the letter or spirit of this Settlement Agreement. This duty of consultation shall apply to any party who applies to the Court to withdraw from or modify the settlement, for relief from a covenant not to sue, or for any order in connection with the settlement.

8. Nothing in this Settlement Agreement and no action taken by any Settling Party in the course of the negotiation of this Settlement Agreement and its attachments, or the drafting of and lobbying for the Legislative Proposals, the 2004 Legislation or the 2005 Legislation shall waive or be construed as a waiver of any party's claim for reimbursement of a state mandate or entitlement to State payment pursuant to Cal. Const. Art. 13B § 6 and all implementing statutes. The Settling Intervenors expressly reserve their rights to seek reimbursement for any state mandate pursuant to Cal. Const. Art. 13B § 6 and all implementing statutes.

9. Requests by defendants or Settling Intervenors for funding to meet workload is consistent with this agreement and shall not be a breach of the covenant to support legislation. A request by any Settling Party to clarify a proposal is not inconsistent with this commitment.

10. Except where specifically so noted in this Settlement Agreement, the defendants take no position regarding the plaintiffs' contentions in this suit or regarding the ultimate conclusions that would follow from those contentions.

11. Pursuant to California Code of Civil Procedure § 583.330, the Settling Parties stipulate to waive the right to dismissal of this action if it has neither been resolved nor proceeded to trial by May 17, 2005, five years from the date of the commencement of this litigation.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By:_____
David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger

DEFENDANTS THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION

By:_____
Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR, BY SWEETIE WILLIAMS, HIS GUARDIAN AD LITEM, ET AL., EACH INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

By:_____
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Morrison & Foerster LLP

Mark D. Rosenbaum
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ACLU Foundation Of Southern California

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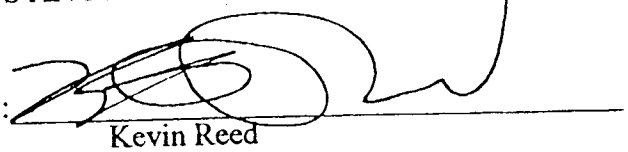
Jenny P. Pearlman
Public Advocates, Inc.

Thomas Saenz
Hector Villagra
Mexican American Legal Defense and Educational Fund

Attorneys for Plaintiffs

INTERVENOR AND CROSS-DEFENDANT
LOS ANGELES UNIFIED SCHOOL DISTRICT

By: 

Kevin Reed
General Counsel

INTERVENOR AND CROSS-DEFENDANT
LONG BEACH UNIFIED SCHOOL DISTRICT

By: _____
David Grossman
LOEB & LOEB
Attorneys for

INTERVENOR AND CROSS-DEFENDANT
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By: _____
Arlene Ackerman
Superintendent of Schools

INTERVENOR CALIFORNIA SCHOOL BOARDS ASSOCIATION

By: _____
N. Eugene Hill
Olson, Hagel & Fishburn, LLP

By: _____
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LEGISLATIVE PROPOSALS

STANDARDS, BENCHMARKS, AND CORRECTIVE ACTION:

Parts I & II

August 12, 2004

"Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities." (May 14, 2004 letter from Peter Siggins, page 2 point 2.)

Instructional Materials:

The following language represents the Administration's proposal to ensure that every student is provided with standards-aligned instructional materials. Rather than a narrative format as has been used to date in our discussion, the concept language has been placed into appropriate Education Code sections to facilitate a more specific discussion of the concepts. The code section references are arranged in numerical order for easy reference.

1240. The superintendent of schools of each county, shall do all of the following:

* * *

(c) **(1) (A)** Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(B) As a condition of receipt of funds, the county superintendent, or his or her designee, must annually present a report describing the state of the schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index pursuant to Section 52056 in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools to the **school district governing board** and the board of supervisors of his or her county. For Amador, Alpine, Del Norte, San Francisco, Sierra, Mariposa, and Plumas Counties, these county offices of education shall contract with a neighboring county office of education **or an independent auditor to conduct the required visits and make all required reports.** The results of the visit shall be reported to the school district governing board **on a quarterly basis at a regularly scheduled meeting,** in accordance with public notification requirements.

The visits shall be conducted at least annually and must meet the following criteria:

(1) Not disrupt the operation of the school

(2) Be performed by individuals who meet the requirements of Section 45125.1, including an independent auditor that conducts the visits.

(3) Consist of not less than 25 percent unannounced visits. During unannounced visits the superintendent shall not demand access to documents or specific school personnel. Unannounced visits **shall only be used to observe the condition of school repair and maintenance and the sufficiency of or instructional materials, as defined by Section 60119.**

(4) The priority objective of the visits for schools ranked in deciles 1 to 3, inclusive, shall be to determine if there are all of the following:

(A) Sufficient textbooks as defined in Section 60119, and as provided for in (i) of this section.

(B) Emergency or urgent facilities conditions that pose a threat to the health or safety of pupils.

(C) Accurate data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities including good repair as required in sections 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.

* * *

(i) **(1)** Enforce the use of sufficient state textbooks or instructional materials and of high school textbooks or instructional materials regularly adopted by the proper authority. **For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119**. In enforcing the use of textbooks or instructional materials, the superintendent shall specifically review at least annually schools in deciles 1 to 3, inclusive, of the Academic Performance Index as a priority if those schools are not currently under review through a State or federal intervention program. **The reviews shall be conducted within the first four weeks of the school year.**

If the superintendent determines that the district does not have sufficient textbooks or instructional materials pursuant to subdivision (a)(1)(A) of 60119 and as defined by subdivision (c) of Section 60119, the superintendent shall do the following:

(1) Prepare a report that specifically identifies and documents the areas or instances of non-compliance.

(2) Promptly provide a copy of the report to the district, as provided in subdivision (c), and forward the report to the Superintendent of Public Instruction.

(3) Provide the district with the opportunity to remedy the deficiency. However, the county superintendent shall ensure resolution no later than the second month of the school year.

(4) If the deficiency is not remedied pursuant to paragraph (3), the county superintendent shall request the State Department of Education, with approval by the State Board of Education, to purchase textbooks or instructional materials, necessary to comply with sufficiency requirement of this section. If the State Board approves a recommendation from the department to purchase textbooks or instructional materials for the district, the Board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board failed to provide pupils with sufficient textbooks or instructional materials as required by this section. Prior to the purchase of textbooks or instructional materials, the department shall consult with the school district superintendent to determine the districts selection of textbooks or instructional materials. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420). The funds necessary for the

purchase shall be considered to be a loan to the school district receiving the textbooks or instructional materials. Unless the district repays the amount owed based upon an agreed upon schedule with the Superintendent of Public Instruction, the Superintendent of Public Instruction shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks, from the district's next principal apportionment or other apportionment of state funds.

It is the intent of the Legislature to appropriate any savings achieved as a result of schools being phased out of from the High Priority Schools Grant Program to provide High Priority Schools Grant awards to eligible schools, pursuant to Section 52055.605, that have not previously received a grant under this program.

* * *

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not adopt all of the listed options as a condition of funding under the terms of this act. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to
address the needs of high-priority pupils.

(b) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(1) Pupil literacy and achievement.

(2) Quality of staff, including highly qualified teachers as required by the No Child Left Behind Act and provision of appropriately credentialed teachers for English learners.

(3) Parental involvement.

(4) Facilities in good repair as specified in subdivision (a) of Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089, and curriculum, instructional materials, **at a minimum,** consistent with the requirements of Section 60119, and support services. The amendments to this paragraph shall apply only to schools entering the program on or after the 2004-05 fiscal year.

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the progress made towards achieving English language proficiency as measured by the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners, as defined in subdivision (c) of Section 60119. The amendments to this section shall apply only to schools entering the program on or after the 2004-05 fiscal year.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

* * *

60119. (a) For the 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1)(A)The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has~~, or will have prior to the end of that fiscal year,~~ sufficient textbooks or instructional materials, or both, in each subject (mathematics, science, history -social science and English/language arts (including any English Language Development component of an adopted program)) that are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education. The public hearing shall take place on or before the end of the eighth week from the first day in which pupils attended school for that year, except for districts that operate schools on multitrack, year-round calendars, the hearing shall take place on or before the end of the eighth week from the first day in which pupils attended school for that year on any tracks that begin school years in the months of August or September.

(B) As part of the hearing required in this section, the governing board shall also make a written determination as to whether each pupil enrolled in Foreign language and Health courses in the district has sufficient textbooks or instructional materials, for those subjects that are consistent with the content and cycles of the curriculum framework adopted by the state board. The governing board shall also determine the availability of laboratory science equipment as applicable to science laboratory courses in grades 9 to 12, inclusive. However, the provision of the textbooks or instructional materials or science equipment specified in this subparagraph shall not be a condition of receipt of funds as provided by this subdivision.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to

classroom teachers and to the public setting forth, for each school in which an insufficiency exists, the extent of the insufficiency, the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within ~~a two-year period~~ two months of the beginning of the school year in which the determination is made ~~from the date of the determination~~.

* * *

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c) (1) For purposes of this section sufficient textbooks or instructional materials means that each pupil, including English Learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments. This shall not be construed to require two sets of textbooks or instructional materials for each pupil.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

* * *

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(3) A school district shall ensure that textbooks or instructional materials are ordered before the school year begins, to the extent practicable.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the

statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section. ~~(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.~~

Repeal Education Code Section 62000.4

62000.4. ~~The Instructional Materials Program shall sunset on June 30, 2006. The implementation of the Instructional Materials Program during the 2002-03, 2003-04, 2004-05, and 2005-06 fiscal years shall be contingent upon funding in the annual Budget Act.~~

Additional Legislation

The Administration proposes to require publishers of instructional materials to provide high school districts and unified districts with a standards map related to the instructional materials with verification by the California Department of Education (CDE) with approval by the State Board of Education (SBE). However, the verification process is contingent upon the payment of a fee by the publisher, to be determined by CDE. Thus, the verification process is made available to publisher on a voluntary basis (fee vs. tax issues). Because of the great value in the State endorsement of materials, it is expected that the publishers will voluntarily submit their materials for verification. Currently Superintendent O'Connell is pursuing a similar proposal through Senate Bill 1405 (Karnette), which we would request be amended to reflect this proposal.

Audit Guide Changes

14501. (a) As used in this chapter, "financial and compliance audit" shall be consistent with the definition provided in the "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions" promulgated by the Comptroller General of the United States. Financial and compliance audits conducted under this chapter shall fulfill federal single audit requirements.

(b) As used in this chapter, "compliance audit" means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.

(c) Compliance audit shall also include the verification of each of the following:
(1) the reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119,
(2) teacher missassignments pursuant to Section 44258.9 and

(3) the accuracy of information reported on the School Accountability Report Card required by Section 33126. These requirements shall be added to the audit guide requirements pursuant to Section 14502.1 (b).

* * *

41020 (i) (1) Commencing with the 2002-03 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have either been corrected or an acceptable plan of correction has been developed.
(2) Commencing with the 2004-05 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, use of Instructional Materials Program funds, teacher missassignments pursuant to Section 44258.9, information reported on the School Accountability Report Card required by Section 33126 and any miscellaneous items, and determining whether the exceptions have either been corrected or an acceptable plan of correction has been developed.

* * *

41344.4 Notwithstanding any other provision of law, a local education agency shall not be required to repay an apportionment based on a significant audit exception related to the requirements specified in subdivision (c) of 14501, if the county superintendent of schools certifies to the Superintendent of Public Instruction and the Controller that the audit exception has been corrected by the local education agency or that an acceptable plan of correction has been submitted to the county superintendent of schools, pursuant to Section 41020(k). With respect to textbooks and instructional materials the plan shall be consistent with the requirements of section 60119 (a)(2)(A).

* * *

Uniform Complaint Process

The Administration proposes that each district use its existing uniform complaint process, **as set forth in Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations,** with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. **The process shall include, but is not limited to, each of the following components:**

(A) Complaints may be filed anonymously. Complainants who identify themselves are entitled to a response, **if they indicate they request a response (forms to include a check off if a response is requested)**. All complaints and responses shall be public records.

(B) The complaint form shall specify the location for filing these complaints and complainants may add as much text to expand on the complaint as they wish.

(C) Complaints should be filed with the Principal of the school or his or her designee. Complaints about problems beyond the authority of the school Principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate district official for resolution.

The Principal **or district superintendent's designee**, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The Principal **or district superintendent's designee** shall remedy the problem within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The Principal **or district superintendent's designee** shall report to the complainant of the resolution of the complaint within 45 working days of the initial filing. If the Principal makes this report, then the Principal shall also report the same information in the same timeframe to the district superintendent's designee.

Complainants not satisfied with the resolution of the Principal **or superintendent's designee** shall have the right to describe the complaint to the governing board of the district at a regularly scheduled hearing thereof. As to complaints involving emergency or urgent school facilities conditions, a complainant not satisfied with the resolution of the Principal or superintendent's designee shall have the right to file an appeal to the Superintendent of Public Instruction, who shall provide a written report to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

Districts shall report summarized data on the natures and resolutions of all complaints on a quarterly basis to the county superintendent of education and the school governing board. **The summaries** shall be publicly reported on a quarterly basis at regularly scheduled school board meeting. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

These procedure are intended to address all of the following:

Complaints related to Instructional Materials where:

- Consistent with Section 60119:
  1. A student, including an English Learner, does not have standard-aligned textbooks or instructional materials, State Board adopted or district-adopted (for grades 9-12) text or other required instructional material to use in class.

2. A student does not have access to instructional materials to use at home/after school as needed to meet homework assignments.

- Materials are in poor or unusable condition, e.g. pages are missing, books are unreadable due to damage.

Complaints related to Teacher Vacancy or Misassignment:

- A semester begins and no permanent teacher is assigned to teach a class.
- A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20% English learner students in the class.
- A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

For purposes of this section "vacant position" means a position that is budgeted but not filled by a permanent or probationary employee.

For purposes of this section "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential, or is otherwise authorized by law.

Complaints related to Facilities:

- Emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff.

In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the district notifying parents and guardians of the following:
(1) Sufficiency of textbooks or instructional materials as defined in section 60119.
(2) School facilities must be clean and safe and in good repair pursuant to Sections 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.
(3) The location from which to receive a form to file a complaint in case of a shortage.
Posting the notice downloadable from the CDE website satisfies this requirement.

School Facilities

Good repair is determined by local health standards applicable to similar facilities. Sections 17014, 17032.5, 17070.75, and 17089 shall be amended to define "good repair" to mean, until at least July 31, 2005, satisfaction of local health standards applicable to restaurants, rental housing, and other similar facilities.

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition.

* * *

(e) As a condition of participation in the school facilities program and the receipt of funds pursuant to Section 17582, each district shall establish a facilities inspection system to ensure that school are in good repair **consistent with local health standards applicable to restaurants, rental housing and other similar facilities** (Health & Safety Code Section 16500).

* * *

TEACHERS

Part III

August 12, 2004

"With respect to instruction and teaching, instructional programs and practices, as well as teacher training and development, should be pedagogically sound, focused on subject matter content and aligned to the State's academic content standards. Every child in California should have access to qualified teachers within the time frame prescribed by the federal No Child Left Behind Act with priority given to providing fully credentialed teachers where most needed." (May 14, 2004 letter from Peter Siggins, page 2 point 3.)

The following language represents the Administration's proposal to ensure that every student is provided with a qualified teacher who is also a highly qualified teacher under the federal No Child Left Behind Act (NCLB). The code sections are set forth in numerical order. For clarity, only changes related to teachers are presented in this document.

33126. (a)

* * *

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

* * *

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, ~~and~~ any assignment of teachers outside their subject areas of competence, **misassignments, including misassingments of English learner teachers, and the number of vacant teacher positions** for the most recent three-year period.

For purposes of this section "vacant position" means a position that is budgeted but not filled by a permanent or probationary employee.

For purposes of this section "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential, or is otherwise authorized by law.

* * *

42127.6 (a) If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the

current or two subsequent fiscal years or if a school district has a qualified certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:

***

(7) Assign the Fiscal Crisis and Management Assistance Team to review district teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and extent of teacher misassignment and provide the district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. If a district is assigned this review, the district shall follow the recommendations made unless the district shows good cause for failure to do so.

* * *

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low . To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and ~~(c)~~ (e).

(b) (1) Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:

(A) Schools and school districts that are likely to have problems with teacher misassignment **and teacher vacancies** based on past experience or other available information. **However, priority shall be given to schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, if those schools are not currently under review through a State or federal intervention program.**

(B) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher in an assignment requiring a CLAD, BCLAD or SB 1969/395 training, completed the necessary requirements, for these certificates.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel **and teacher vacancies** shall be submitted to each affected district within ~~45~~30 calendar days of the monitoring activity.

(e) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing **and the Department of Education** summarizing the results of

all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by local district governing boards under the authority of Sections 44256, 44258.2, and 44263 of the Education Code.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) Information on certificated employee assignment practices in schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, to ensure that, at a minimum, in any classes in these schools in which 20 percent or more students are English learners the assigned teachers possess CLAD or BCLAD credentials or have SB 1969/395 training, or is otherwise authorized by law.

(4-5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

* * *

(i) The State Superintendent of Public Instruction shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (e) of this section to the Legislature. The Legislature shall hold, within a reasonable period after receipt of the summary, public hearings on student access to teachers and to related statutory provisions. The Legislature may also assign one or more of the standing committees or to a joint committee, to determine: (a) the effectiveness of the reviews required pursuant to this section; (b) the extent, if any, of vacancies and misassignments; and (c) the need, if any, to assist schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056, eliminating vacancies and misassignments.

* * *

44274. (a)The commission shall conduct periodic reviews, beginning in 1998, to determine whether any state has established teacher preparation standards**, including standards for teachers of English learners,** that are at least comparable and equivalent to teacher preparation standards in California.

* * *

(c) The commission shall grant an appropriate credential to any applicant from another state who has completed teacher preparation that is at least comparable and equivalent to preparation that meets teacher preparation standards in California, as determined by the

commission pursuant to this section, if the applicant has met the requirements of ~~California for the basic skills proficiency test pursuant to subdivision (d) of Section 44275.3 and~~ teacher fitness pursuant to Sections 44339, 44340, and 44341.

* * *

44275.3. Notwithstanding any other provision of law:

* * *

(b) Notwithstanding any other provision of this chapter, the commission shall issue a five-year preliminary multiple subject or single subject teaching credential or a five-year preliminary education specialist credential to any out-of-state prepared teacher who meets all of the following requirements:

* * *

~~(c) An out-of-state prepared teacher who has been issued a California five-year preliminary multiple subject, single subject, or education specialist teaching credential shall pass the state basic skills proficiency test, administered by the commission pursuant to Section 44252, within one year of the issuance date of the credential in order to be eligible to continue teaching pursuant to this section.~~

(d) The commission shall issue a professional clear credential to an out-of-state prepared teacher who has met the requirements in subdivision (b) and who meets the following requirements:

(1) ~~Passage of the state basic skills proficiency test administered by the commission pursuant to Section 44252.~~

* * *

~~(5)Completion of the study of health education pursuant to suparagraph (A) of paragraph (3) of subdivision (c) of Section 44259. Completion of coursework in another state determined by the commission to be comparable and equivalent shall meet this requirement.~~

***

~~(8) Completion of a fifth-year program at a regionally accredited institution of higher education, except that the commission shall eliminate this requirement for any candidate who has completed an induction program for beginning teachers.~~

44325 (e): The California Commission on Teacher Credentialing shall ensure that each district internship program in California provides program elements to its interns as required by the No Child Left Behind Act, 20 USC Section 7801, and its implementing regulations, 34 CFR Section 200.56.

44453: add: The California Commission on Teacher Credentialing shall ensure that each university internship program in California provides program elements to its

interns as required by the No Child Left Behind Act, 20 USC Section 7801, and its implementing regulations, 34 CFR Section 200.56.

44511. (a) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award incentive funding to provide schoolsite administrators with instruction and
training in areas including, but not limited to, the following:

(1) School financial and personnel management. **This training shall specifically provide instruction related to personnel management, including hiring, recruitment and retention practices and misassignments of certificated personnel.**

* * *

(3) Curriculum frameworks and instructional materials aligned to the state academic standards, **including ensuring the provision of textbooks or instructional materials as defined in Section 60119.**

* * *

52055.640. (a) As a condition of the receipt of funds for the initial and each subsequent year of funding pursuant to this article and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

* * *

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district. **Commencing with fiscal year 2004-05, for any districts with schools entering the program on or after July 2004, the report shall include whether the school does not have at least 80 percent of its teachers credentialed and the number of classes in which 20 percent or more students are English learners and assigned to teachers who do not possess that CLAD/BCLAD credentials or SB 1969/395 training, or is otherwise authorized under current law.**

(c) The report on the quality of staff component shall include, but not be limited to, the following information:

* * *

52059. * * *

(b)The system shall provide assistance to school districts and schools in need of improvement by:

(1)Rreviewing and analyzing all facets of a school's operation including:

(A)D~~d~~esign and operation of the instructional program offered by the school~~, and by assisting.~~

(B) Recruitment, hiring and retention of principals, teachers and other staff, including vacancy issues. The system may access the assistance of the Fiscal Crisis and Management Assistance Team to review district or school recruitment, hiring and retention practices.

(C) Roles and responsibilities of district and school management personnel.

(2)Assisting the school district and its schools in developing recommendations for improving pupil performance and school operations.

(3)Assisting schools and districts in efforts to eliminate misassignments of certificated personnel.

* * *

Audit Guide Changes:

See Standards and Benchmarks I & II

Additional Legislation

- The annual report to the Legislature concerning the teaching force in California (Education Code section 44225.6) shall also include data on the extent to which pupils receive instruction from teachers who do not have a preliminary or professional clear credential, the extent to which English learners receive instruction by teachers without CLAD, BCLAD, or SB1969/395 authorization and if available, the percentage and distribution throughout the state of teachers possessing the different types of credentials set forth in section 44225.6 and including CLAD, BCLAD, and SB 1969/395 credentials. [If data is available, the report shall also include information on the number of teacher vacancies.]

- In an effort to meet the highly qualified teacher timelines of NCLB, districts are encouraged to provide first priority in the receipt of resumes and job applications from credentialed teachers, with hiring priority to all schools in deciles 1 to 3, inclusive, based on the API rankings established by Education Code section 52056(a). Thereafter, any school in the district may review and offer a position to a new applicant. Applicant teachers are not required to accept the offers from first priority schools as a condition for employment in the district.

FACILITIES INVENTORY & GRANT PROGRAM

Part IV

August 12, 2004

> **"The defendants will prepare a statewide inventory of all school facilities to determine the capacity, usage and present physical status of those facilities."** (May 14, 2004 letter from Peter Siggins, page 2, point 2.)

The Administration is committed to identifying and resolving urgent facilities needs that effect the health and safety of students and staff at schools to assist schools in deciles 1 to 3, inclusive, based on the Academic Performance Index ranking established by Section 52056. To that end, the Administration proposes an assessment of these schools as well as a state grant program to reimburse school sites and districts for costs associated with the resolution of specified facilities needs.

School Facilities Needs Assessment Grant Program

SEC. 1. Section 17591.500 is added to the Education Code to read:

(a) There is hereby established a School Facilities Needs Assessment Grant Program to provide for a comprehensive assessment of school facilities needs. The grant shall be administered jointly by the Superintendent of Public Instruction and the State Allocation Board.

(b) The grants shall be awarded to schoolsites ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school.

(c) The Superintendent shall allocate funds pursuant to subdivision (b) of this Section to school districts with jurisdiction over eligible schoolsites, based on schoolsite enrollment, with a minimum allocation of _____ thousand dollars ($X,XXX) and a maximum allocation of _____ thousand dollars ($XX,XXX) for each schoolsite.

(d) As a condition of receiving funds pursuant to this Section, school districts shall:

(1) use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at minimum, all of the following for each school building that is currently used for instructional purposes:

1. the year each building was constructed
2. the year, if any, it was modernized
3. the capacity of the school

4. the number of students actually enrolled in the school
5. the density of the school campus measured in students per acre
6. the total number of classrooms at the school
7. the number of portable classrooms at the school
8. whether the school is operating on a multi-track, year-round calendar, and if so, what type; and
9. whether the school has a lunchroom, or an auditorium or other space used for student eating and not for class instruction.
10. Useful life remaining of all major building systems for each structure housing instructional space including but not limited to sewer, water, gas, electrical, roofing, fire and life safety protection.
11. Estimated costs for five years necessary to maintain functionality of each instructional space to maintain health and safety and suitable learning environment, as applicable, including classrooms, counseling, administrative space, libraries, gymnasiums, multi-purpose and feeding space, and the accessibility to such spaces.

(2) The district shall provide the data currently filed with the State as part of the process of applying for and obtaining facilities modernization or construction funds, or information that is available in CBEDS for the element required in 4, 5, 6 and 7.

(3) Districts shall use the assessment as the baseline for the facilities inspection system required pursuant to subdivision **(e)** of Section 17070.5.

SEC. 2. Section 17591.501 is added to the Education Code to read:

17591.501 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 to complete the comprehensive assessments pursuant to this section.

School Facilities Emergency Repairs Account (FERA)

SEC. X Section 17594 is added to the Education Code to read:

(a) There is hereby established in the State Treasury the School Facilities Emergency Repairs Account. The Office of Public School Construction in consultation with the Superintendent of Public Instruction shall administer the account. A total of $800 million shall be made available for this account as funds become available from the sources described in this paragraph. Beginning with the 2005-06 budget, at least 50 percent of the unappropriated balance, but not less than $100 million, from the Proposition 98 Reversion Account shall be annually transferred to this fund. In addition, any other one-time Proposition 98 General Fund sources as well as any monies donated by private entities may be transferred to this account. The amounts deposited into the account shall be used for the purpose of addressing unforeseeable emergency facilities needs at schools, ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school. Any donations to the account shall be tax exempt and treated as a charitable contribution to the extent allowed under both federal and state law.

(b) (1) All monies in the Facilities Emergency Repairs Account are available for reimbursement to schools, ranked in deciles 1 to 3, inclusive, of the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index for each school, to cover the school district's cost repair projects that meet the criteria specified in paragraph (c) and as approved by the State Allocation Board.

(2) As a condition of reimbursement, districts shall complete the projects and shall certify to the Office of Public School Construction that the repair or replacement could not have been avoided as part of their ongoing maintenance or deferred maintenance programs. The Office of Public School Construction shall conduct random reviews of certifications submitted by school districts to ensure that the repairs are consistent with the intent of this section.

(c) For the purpose of this Section, unforeseeable emergency facilities needs shall mean structures or systems which are unusable for their current purpose and which, as a result, pose a threat to the health and safety of pupils or staff while at school. Such needs may include the following types of facility project repair or replacements:

1. Gas Leaks
2. Existing non-functioning heating, ventilation, fire sprinklers, air conditioning systems
3. Electrical power failure
4. Major sewer line stoppage
5. Major pest or vermin Infestation
6. Broken windows or exterior doors, gates, that will not lock and that pose a security risk.
7. Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff
8. Unforeseen structural damage creating a hazard or uninhabitable condition

For the purpose of this section, structures or components shall only be replaced if it is more cost effective than repair.

(d) For the purpose of this Section, unforeseeable emergency facilities needs shall not include any cosmetic, or non-essential repairs or repairs that would already be addressed in the districts' 5 year deferred maintenance plan or through ongoing scheduled maintenance.

SEC. X Section 17594.1 is added to the Education Code to read:

(a) In addition to all other powers and duties as are granted to the State Allocation Board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. The initial regulations adopted pursuant to this chapter shall be adopted by _____, **X, 2004.** If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter. Regulations adopted pursuant to this subdivision shall be adopted by _____**X, 2004**, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

CONCEPT 6 PROPOSAL

August 12, 2004

1. Education Code section 37670 shall be amended to provide that no district not currently operating a school on a three-track year-round calendar providing fewer than 180 days of school per year ("Concept 6 Calendar") shall be allowed to begin using any such calendar and no school not currently operating on a Concept 6 calendar may be converted to that calendar. No school district may open a school on a Concept 6 calendar if doing so would increase the number of schools in the district operating on that calendar beyond the number in operation in the district, on average, over the preceding two school years.

2. Education Code section 37670 shall be amended to prohibit the use of the Concept 6 calendar after July 1, 2012 or such earlier date as may be prescribed by the Legislature under AB 560. Section 37670 shall also be amended to state that, while 2012 is the formal end of the authority to use the Concept 6 calendar, it is the intent of the state that all schools cease using it as soon as practicable.

3. As a condition of operating any school on a Concept 6 calendar in the 2004-05 school year or thereafter, a district must, by January 1, 2005, present to the State Department of Education a comprehensive action plan detailing the strategy and steps to be taken annually to eliminate the use of the Concept 6 calendar as soon as practicable.

a. This action plan shall include an analysis of the district's demographic forecasts, space use and needs, class sizes, programmatic constraints, facilities construction status, the amount of funding needed to create additional classroom space, and the proposed sources of that funding. A district may not rely upon the use of involuntary busing of more than 40 minutes each way, other than that otherwise done pursuant to a desegregation plan, as a means for achieving elimination of the Concept 6 calendar.

b. The action plan shall also contain (i) a detailed description of the multiple phases of planning and construction (e.g., site identification, site acquisition, construction commencement, construction completion/ occupancy) of projects designed to eliminate use of the Concept 6 calendar, including a reasonable projection of the number of additional seats to be provided through each of the multiple phases of planning and construction, and (ii) reasonable, district-wide numerical goals against which annual progress towards eliminating the use of the Concept 6 calendar can be measured (e.g., number of new seats added to reduce reliance on the Concept 6 calendar), including a reasonable projection of the number of students, if any, it estimates will remain on a Concept 6 calendar on July 1 of each year through 2012. However, where a district projects that it will cease use of the Concept 6 calendar before July 1, 2008, the district's comprehensive action plan need not include a detailed description, as required in (i), but only a narrative explanation of how it will accomplish the end of the use of the Concept 6 calendar and project the date that each school currently using it will cease to do so.

4. The Superintendent of Public Instruction shall evaluate the comprehensive action plans submitted by each district and shall make recommendations to the State Board of Education for approval or disapproval of the plans. The Superintendent's evaluation shall be based on the reasonableness of the district's plan in eliminating Concept 6 calendars by the earliest practicable date and no later than July 1, 2012, including whether adequate sources of funding have been identified to accomplish this end. In considering whether a district has identified adequate sources of funding, the Superintendent shall consult with the Office of Public School Construction. If the Board disapproves a plan, it shall specify the reasons for disapproval and require the district to submit a revised plan, within a specified time frame, to address the Board's concerns.

5. Each district operating a Concept 6 calendar shall report each January to the Superintendent of Public Instruction, who shall report to the State Board of Education, on progress made in reaching the annual numerical goals established in its comprehensive action plan.

Any failure to meet an annual goal shall require the district to identify the specific cause(s) of that failure and will necessitate the amendment of the comprehensive action plan showing the specific steps that will be taken to remedy that failure such that the district will still eliminate the use of the Concept 6 calendar by the ending date originally specified in the action plan.

Each district operating a Concept 6 calendar shall file a supplementary, mid-year report where the district's progress toward its numerical goals has or is projected to change materially. The report shall describe the nature and cause of the material change(s) and show the specific steps that will be taken, and detail state technical assistance needed, if any, to address the change(s).

The Superintendent of Public Instruction shall evaluate the supplementary, mid-year reports, if any, and make recommendations to the State Board of Education for approval or disapproval of the reports. The Superintendent's evaluation shall be based on the reasonableness of the district's supplemental plan to reach its annual numerical goals and eliminate Concept 6 by the earliest practicable date and no later than July 1, 2012. If the Board disapproves a supplemental report, it shall specify the reasons for disapproval and require the district to submit a revised report, within a specified time frame, to address the Board's concerns.

6. Districts planning to operate a Concept 6 calendar after June 30, 2006 must, by July 1 of 2006 and any succeeding year in which it will operate a Concept 6 calendar, as a condition of operating that calendar, prove to the satisfaction of the Superintendent of Public Instruction that substantial progress has been made toward moving all schools to a calendar of at least 180 days. The Superintendent shall submit its written evaluation (of each district's submission) to the State Board of Education, which shall determine whether substantial progress has been made.

Substantial progress shall be defined as having come within 10% of the annual numerical goals set forth in the district's comprehensive action plan.

If a district has failed to make substantial progress toward its annual numerical goals, as defined above, for any two consecutive years between 2005 and 2012, the district shall be precluded from approving any new construction or portable classroom project other than a project directly designed to eliminate the use of the Concept 6 calendar or reduce capacity-related busing that transports students more than 40 minutes to or from school; designating developer fees revenue for any purpose not directly related to eliminating Concept 6 or reducing capacity-related busing; and approving the issuance of any Certificates of Participation for any facilities-related purpose not directly related to the elimination of the Concept 6 calendar or the reduction of capacity-related busing. Construction deemed eligible and necessary by the State Allocation Board under 2 Cal. Code Regs. 1859.82(a)(1) shall not be precluded.

These restrictions on the approval of new school or portable classroom projects, designation of developer fees, and issuance of Certificates of Participation shall remain in effect until such time as the district has achieved substantial progress as determined by the State Board of Education.

7. Districts planning to operate a Concept 6 calendar after June 30, 2009 must, by July 1 of 2009 and any succeeding year in which it will operate a Concept 6 calendar, prove to the satisfaction of the Superintendent of Public Instruction that it has developed specific school building planning to deliver classroom seats sufficient to eliminate Concept 6 by the earliest practicable date and no later than July 1, 2012. The Superintendent shall submit its written evaluation (of each district's submission) to the State Board of Education, which shall determine whether the district has developed specific school building planning.

"Specific school building planning" shall mean, at a minimum, that the district has identified preferred sites and approved as required under CEQA the project(s) needed to create the capacity required, and that the district has identified and obtained the funding necessary to complete the project(s) required. If state funding is part of the funding so identified, "obtained" shall mean that the district has received 1) an apportionment from the state for the project, or 2) a preliminary apportionment for the project under the Critically Overcrowded School Facilities program.

8. If on or after July 31, 2008 and any succeeding year in which a district operates a Concept 6 calendar, the State Board of Education finds that a district has failed to make substantial progress in eliminating the Concept 6 calendar, or if on or after July 31, 2009 and any succeeding year in which a district operates a Concept 6 Calendar, the State Board of Education finds that a district has failed to develop specific school building planning, the Board shall hold a public hearing to determine the causes of such failure and the remedies to be undertaken by the state or imposed on the district to ensure elimination of the Concept 6 calendar by the earliest practicable date and no later than July 1, 2012.

9. Before the public hearing, the Superintendent of Public Instruction and the State Allocation Board shall each provide a written analysis and opinion to the State Board of Education as to the causes of the failure and the remedies proposed to be undertaken. The

State Allocation Board shall render its opinion acting upon a written analysis prepared by the Office of Public School Construction. Any affected district may submit its own analysis as to the causes of the failure and remedies it proposes to be undertaken. After the public hearing, the State Board of Education shall adopt a remedial plan -- to ensure elimination of the Concept 6 calendar by the earliest practicable date and no later than July 1, 2012 -- that the district shall follow.

10. If the State Board of Education determines that a district's failure to achieve substantial progress or develop specific school building planning is due to circumstances beyond the control of the district and despite the district's good faith efforts, the Board's remedial plan may include the provision of technical assistance to the district from the Department of Education, the Office of Public School Construction and/or the Division of the State Architect. "Technical assistance" may include, but is not limited to, assistance in identifying and acquiring school sites, guidance in maximizing access to funding necessary to create alternative student housing, and facilitation of the process of obtaining state approval for new construction projects. The Board's remedial plan may also recommend action for state financial assistance necessary to enable the district to eliminate the Concept 6 calendar by the earliest date practicable and no later than July 1, 2012.

If the State Board of Education determines, however, that a district's failure to achieve substantial progress or develop specific school building planning is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 calendar or to execute the plan, the Board's remedial plan must mandate regular (at least quarterly) review and oversight of the district's efforts by the State Department of Education. In the exercise of the Board's discretion, such review and oversight may be weekly, monthly, quarterly, or whatever other regular interval the Board deems appropriate. The Board's remedial plan may also include any of the measures described in the paragraph above or other such measures as it deems necessary to enable the district to eliminate the Concept 6 calendar by the earliest date practicable and no later than July 1, 2012.

If on or after July 1, 2009, the State Board of Education determines that a district's failure to achieve substantial progress or develop specific school building planning is not due to circumstances beyond the control of the district, but due to its failure to act diligently to plan for the elimination of the Concept 6 calendar and/or to execute the plan, the Board shall hold a public hearing to determine whether the Board should implement direct oversight of the district's facilities construction program. If, in the exercise of its discretion, the Board determines implementation of direct oversight is needed to ensure elimination of the Concept 6 calendar no later than July 1, 2012, the Board shall implement such oversight within 90 days of its determination.

Direct oversight by the Board of Education shall consist of assigning to the district a monitor, who shall report to the Board at each of its regularly scheduled meetings on progress made by the district in working towards the elimination of the Concept 6 calendar. The monitor shall have relevant experience in engineering, construction or management of major public works projects and shall have the resources and authority to contract with appropriate

professionals in the fields of program management, project management and finance. In selecting any monitor, the State Board of Education shall receive nominees from, and consult with, the superintendent of the district subject to the monitor, the Office of Public School Construction, and the bond oversight committee of such district as has been established under Education Code section 15278.

The Board-appointed monitor shall make recommendations to the district with respect to the planning and implementation of its school-building program. The district shall follow the recommendations of the monitor unless the district shows, to the satisfaction of the State Board of Education, good cause for not doing so. Any recommendation of the monitor that is mandatory, as opposed to prohibitory, shall be stayed during the time the district contests the recommendation before the State Board. The Board shall meet to hear and decide any such contest within 30 days of the district's submitting its contest. The monitor shall report to the State Board of Education regarding the district's implementation of the monitor's recommendations. The Board shall have the authority to direct the district to implement the monitor's recommendations in the absence of the district showing good cause for not doing so. Any order of the Board directing the district to implement the monitor's recommendations and any determination of the district's good cause in failing to implement such recommendation shall be made upon recommendation of the Office of Public School Construction, with reasonable notice to the district, at a meeting of the Board, with an opportunity for the district to show in writing or in oral testimony the grounds for its position. The monitor's reports shall be made available to the district's superintendent, governing board and bond oversight committee at least 10 days before the meeting of the Board at which they are presented and the district and the bond oversight committee shall be given an opportunity to address the Board regarding such reports.

11. "Circumstances beyond the control of the district" shall be strictly defined and interpreted and the definition shall include at minimum the following:

a. any increase in student population beyond district demographic projections set forth in the district comprehensive action plan or any amendments to the plan shall constitute a circumstance beyond the control of the district only if the district can demonstrate that the increase was not reasonably foreseeable through the use of annual, informed re-estimation of demographic projections;

b. any cost escalation, shortages in construction material or capacity, delay in completion of environmental reviews, or natural or human-made disaster materially affecting the district's facilities program shall constitute a circumstance beyond the control of the district only if the district can demonstrate that the delay or increased cost was not reasonably foreseeable and the district exercised due diligence in planning for such risk;

c. lack of sufficient state or local funding to complete necessary school construction shall not constitute a circumstance beyond the control of the district unless the district can demonstrate that from July 1, 2004 to date, it has not approved the expenditure of any state or local funds designated for new school construction for any purpose other than the construction of additional school seats to reduce reliance on the Concept 6 calendar and such additional

education-related facilities as are reasonably necessary to construct a new school, with the exception of construction deemed eligible and necessary by the State Allocation Board for funding under 2 Cal. Code Regs. 1859.82(a)(1).

12. The Critically Overcrowded Schools program shall be amended to ensure that any project that will relieve overcrowding at a Concept 6 school will meet the definition of, and be eligible for funding, as a Critically Overcrowded School Facilities Program project.

13. Reports mandated of districts operating on a Concept 6 calendar shall be made available to the public, and all interested parties shall be permitted the opportunity to submit comments to such reports within a reasonable time following the reports' submission to the appropriate state agency.

COVENANT NOT TO SUE

COVENANT NOT TO SUE

It is hereby agreed between the Defendants (the State of California, the State Board of Education, the Superintendent of Public Instruction, the State Department of Education), and the representatives of the plaintiff class that:

1. Members of the plaintiff class shall be bound by a covenant not to sue the defendants on the claims pursued in *Williams v. State of California*, Case Number 312236 in the Superior Court in and for the City and County of San Francisco ("the Action") for a period of four years from the date the Court grants final approval of the Settlement Agreement; subject to the conditions and exclusions in paragraphs 2 though 5 below.

2. Members of the plaintiff class shall be bound by a covenant not to sue the defendants for constitutional violations based on allegations as to deficiencies in the quality of teachers, with this covenant not to sue in effect for the following periods: (a) through September 30, 2006 (three months after the current compliance deadline for States under the No Child Left Behind Act) for claims with regard to public schools that are not subject to an extended compliance deadline under the No Child Left Behind Act for schools in rural settings ("Extended NCLB Deadline Schools"); and (b) for a period of four years from the date the Court grants final approval of the Settlement Agreement as to claims with regard to Extended NCLB Deadline Schools.

3. Actions pending as of August 9, 2004 brought by parties other than the named plaintiffs in the Action will not be affected by the covenant not to sue.

4. The covenant not to sue shall not apply to an action contesting the denial of graduation from High School based on the results of the High School Exit Examination.

5. If, after final approval of the settlement and during the period of the covenants, plaintiffs contend that the implemented settlement no longer Substantially Conforms to the Legislative Proposals because of actions by the defendants, plaintiffs shall consult with the State and Settling Intervenors and provide defendants with an opportunity to cure any alleged shortcoming by any means available, including fiscal, programmatic, or administrative solutions. After such consultation, plaintiffs may petition the Court to relieve them of the covenant not to sue, provided that such a petition shall be rejected absent clear and convincing evidence that affirmative actions of the defendants after enactment of the 2004 and/or 2004 Legislation caused the implemented settlement no longer to Substantially Conform to the Legislative Proposals. In addition, defendants shall not be required to respond to such a petition unless plaintiffs present a written offer of proof and obtain an order from the Court that the offer of proof is potentially sufficient to carry plaintiffs' ultimate burden as defined above.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By: _____

David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold
Schwarzenegger

DEFENDANTS THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION

By: _____
Joseph O. Egan
Deputy Attorney General

PLAINTIFFS ELIEZER WILLIAMS, A MINOR, BY SWEETIE WILLIAMS, HIS GUARDIAN AD LITEM, ET AL., EACH INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

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Peter J. Eliasberg
ACLU Foundation Of Southern California

Alan Schlosser
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Attorneys for Plaintiffs

PROVISION RE ATTORNEYS' FEES

PROVISION AS TO CLAIMS FOR ATTORNEYS' FEES

It is hereby agreed between the State of California and the representatives of the plaintiff class that:

1. Plaintiffs' counsel will be entitled to recover reasonable attorneys' fees and costs from the State in an amount to be agreed between plaintiffs' counsel and the State or, if not agreed after consultation, to be determined by the Court. After dismissal of the Action in other respects the Court will retain jurisdiction to make that determination, if necessary.

2. Time and costs spent by all of plaintiffs' counsel, including Morrison & Foerster LLP, will be submitted to the Court to justify the amount of an award of attorneys' fees and costs if the Court is asked to determine the reasonableness of such an award. However, whether the amount is determined by agreement or Court award, the firm of Morrison & Foerster LLP will not seek to be paid for its time spent on the *Williams* case except for an amount, if the State agrees, that the firm will donate for charitable uses related to the goals of the settlement.

Dated: August 12, 2004

DEFENDANT THE STATE OF CALIFORNIA

By: _____
David M. Verhey
Deputy Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger

PLAINTIFFS ELIEZER WILLIAMS, A MINOR, BY SWEETIE WILLIAMS, HIS GUARDIAN AD LITEM, ET AL., EACH INDIVIDUALLY

AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

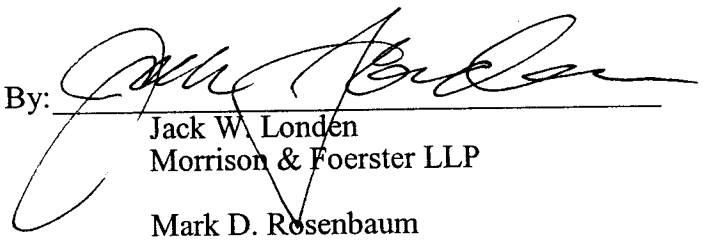
By: 

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EXHIBIT B

OFFICE OF THE GOVERNOR

May 14, 2004

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Re: *Williams v. State of California*

Dear Counsel:

Discussions among some of the parties have progressed to the point where an agreement to resolve this litigation is possible and within reach. For this reason, I write to ensure that all interested parties are aware of those discussions and the concepts that have the Governor's support.

At present, our proposal to resolve this case consists of two parts. The first is a commitment by the Governor to support four principles of educational reform, along with good faith efforts to obtain legislative solutions implementing those principles during the current legislative session. Those principles may be summarized as follows:

1. Regarding management and finance, each school should have more authority in defining and determining its own operation and districts should be provided additional statutory and regulatory relief to increase local control. Although total State expenditures may not matter as much as allocation at the local level and improvements can result without additional resources, a key goal should be to maximize resources that reach the classroom in order to enhance student performance.

2. With respect to school facilities and instructional materials, all schools should be safe and clean. The defendants will prepare a statewide inventory of all school facilities to determine the capacity, usage and present physical status of those facilities. Districts should be accountable for providing standards-aligned instructional materials for every student and adequately maintained school facilities.

3. With respect to instruction and teaching, instructional programs and practices, as well as teacher training and development, should be pedagogically sound, focused on subject matter content and aligned to the State's academic content standards. Every child in California should have access to qualified teachers within the time frame prescribed by the federal No Child Left Behind Act with priority given to providing fully credentialed teachers where most needed.

4. As to accountability and intervention, each child in California should receive a quality education consistent with all statewide content and performance standards adopted by the State Board of Education, and with a rigorous assessment system and reporting program. Resources provided to high-priority (low-performing) schools should be prioritized to improving the academic performance of the lowest performing students. The State should improve districts with schools that consistently fail to meet academic growth targets, or the goals described above, in order to provide help to those schools and students with the lowest academic performance.

We recognize that these solutions will be subject to negotiation and may include programs or school funding methodologies that have been proposed by interested parties during the course of this litigation. Your position on these proposals is important to us and we invite you to communicate any immediate concerns to our office as soon as possible.

The second part of our proposal consists of an agreement by all parties with respect to the following:

1. The education portion of the 2004-2005 budget for education will include funding for the Instructional Materials Block Grant in the amount of $275 million dollars. All settling parties will support these budget bill provisions and work in good faith for their passage.

2. The education portion of the 2004-2005 budget for education will include funding in the amount of $138.7 million dollars, on a one-time basis, for instructional materials for schools identified in the bottom two deciles, as defined by Education Code section 52052. All settling parties will support this funding augmentation and work in good faith for its passage.

3. In addition to the requirements of Education Code section 17078.20, the Office of Public School Construction (OPSC) shall contact all school districts by mail to inform them of the availability of funds through Proposition 55, the basic eligibility requirements for funding, and all relevant deadlines. The mailing will advise that OPSC staff are available to provide reasonable assistance in applying for funds to districts that meet the school site density requirements for the Critically Overcrowded Schools program (Ed. Code, § 17078.10) and that are housing more than five (5) percent of their student population in portable classrooms leased pursuant to Education Code sections 17085-17096.

4. All settling parties will support legislation which repeals or renders inoperative Article 3 (commencing with § 42260) of Chapter 7, Part 24 of the Education Code, so that the increase in maximum school building capacity required by Education Code section 17071.35 is no longer required.

In closing, we note that the parties may be developing procedural mechanisms that will facilitate settlement of the suit along these lines, and we expect to resolve any questions that may arise in connection with those mechanisms in an expeditious manner. As this process unfolds, we will inform the assigned mediator of the status of our discussions, work with the parties to arrive at a final agreement for settlement and continue to work with the Legislature to develop legislative solutions that correspond to the Governor's policy objectives.

If you have any questions or concerns, please feel free to contact David M. Verhey, Deputy Legal Affairs Secretary, at (916) 445-0873.

Sincerely,

PETER SIGGINS
Legal Affairs Secretary

cc: Richard J. Riordan, Secretary for Education
Donna Arduin, Director of the Department of Finance
Joseph Egan, Deputy Attorney General
John Daum, Esq., O'Melveny & Myers

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ELIEZER WILLIAMS, etc., *et al.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated, Plaintiffs, v. STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION, Defendants.	No. 312236 [PROPOSED] ORDER REGARDING PROPOSED SETTLEMENT Department: 210 Judge: Hon. Peter J. Busch Date Action Filed: May 17, 2000 CLASS ACTION

The Court having considered the Notice of Proposed Settlement and supporting papers, the oral argument of counsel, and the other papers of record in this action; good cause appearing,

IT IS HEREBY ORDERED that:

The proposed settlement satisfies the standards for preliminary approval, and such approval is GRANTED.

The process set forth in paragraphs 2 through 4 of the Settlement Implementation Agreement for moving toward final approval of the settlement, subject to the outcome of the parties' efforts to achieve enactment of the agreed legislative proposals, is APPROVED. The parties are directed to keep the Court apprised of the status of the legislation. When according to the agreed procedures, legislation has been enacted that is the basis for a final settlement, plaintiffs are further directed to submit, after consultation with the other parties, a motion for approval of the content, form, and manner of giving notice to the class, and a proposed schedule for submission of comments by class members, submissions by the parties, and a final approval hearing.

The Court further ORDERS that the stay on this litigation shall continue in effect pending the final approval hearing or further order of this Court.

Dated: August __, 2004

Peter J. Busch
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, a minor, by Sweetie Williams, his guardian ad litem, *et al.*, each individually and on behalf of all others similarly situated, Plaintiffs, v. STATE OF CALIFORNIA, DELAINE EASTIN, State Superintendent of Public Instruction, STATE DEPARTMENT OF EDUCATION, STATE BOARD OF EDUCATION, Defendants.	No. 312236 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT** Hearing: Week of March 14, 2005 Time: 9 a.m. Department: 210 Judge: Hon. Peter J. Busch Date Action Filed: May 17, 2000 CLASS ACTION

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INTRODUCTION

Plaintiffs seek final approval of the settlement of this action. Plaintiffs sought to invoke the State's constitutional obligation to redress basic inequalities in the availability of instructional materials in core subjects, poor conditions and overcrowding in school facilities, and the quality of teachers in the worst California public schools. Implementing the settlement of this action, the State of California has enacted five statutes that create and fund programs on the subjects of plaintiffs' contentions. Among other new programs,

On Instructional Materials:

- The State now has a standard for "sufficient" instructional materials. The new standard is that "Each pupil, including English Learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments."
- County Superintendents of Schools have responsibility to review compliance with the instructional materials standards in the API deciles 1 - 3 schools.
- The California Department of Education is authorized to purchase instructional materials needed where those schools do not meet the State standard.
- In addition to the appropriation of $363 million for instructional materials available to all schools, an additional appropriation of $138.7 million for instructional materials for the bottom 20% of schools was enacted as part of the settlement.

On School Facilities:

- The State will enact a definition of "good repair" for public schools.
- School districts are required to operate programs for periodic inspections to ensure that facilities are in good repair.
- County Superintendents of Schools will be responsible for periodic inspections to ensure that schools are in good repair.
- School districts in API deciles 1 - 3 schools will receive grant monies to provide for a one-time comprehensive assessment of school facilities needs.
- The State has created a School Facilities Emergency Repair Account, authorizing the use of up to $800 million to reimburse districts for the costs of correcting specified facilities problems that impair students health and safety in the API deciles 1 - 3 schools.
- The Concept 6 calendar, which provides 17 fewer days of instruction per year, will be phased out by 2012, during which time districts now using the calendars will increase their capacity.

On Teachers:

- The State has confirmed its commitment to meet the federal No Child Left Behind Act standard of a "highly qualified" teacher in every core class by June 2006.
- The State has enacted a new definition for teacher misassignment which clarifies that teachers must be properly authorized to teach their classes and that, in particular, teachers of English Learners must be properly trained to teacher English Learners.
- County Superintendents of Schools have responsibility to investigate schools likely to have problems with misassignments, according to the new standard, giving priority to schools in API deciles 1 - 3 and to investigate school and district efforts to ensure teachers are properly trained to teach English Learners.
- The State has enacted a new standard defining unfilled teaching positions as "teacher vacancies" and requiring County Superintendents of Schools to investigate schools likely to have problems with teacher vacancies.
- Requirements for qualified out-of-state teachers to be certified in California have been revised to facilitate their certification in California.

Overall:

- Funding for the High Priority Schools Grant Program will be continued at its current level of over $200 million, rather than being phased out as the current cohorts of participating schools complete their three-year funding cycle.
- The School Accountability Report Card will disclose information on each school's compliance with State standards on instructional materials, teacher misassignments and vacancies, and facilities conditions.
- Districts will provide complaint forms and procedures so that parents, students, and teachers can seek remedies for problems as to instructional materials, facilities, and teacher assignments.

The statute implementing the settlement have been enacted by the Legislature and signed by the Governor. No Court injunction or consent decree is involved in the settlement. Thus, approval of this settlement does not invoke the Court's equitable discretion over a remedy. Moreover, the claims of the plaintiff class are to be dismissed without prejudice but subject to a covenant not to sue during a future period. Accordingly, as the Court reviews the fairness of the settlement pursuant to Rule 1859(g) of the California Rules of Court and applicable case law, the substance of the review will focus on the fairness of subjecting the plaintiff class to the covenant not to sue, given the benefits achieved for the class. In addition, the Court must consider the

process used to achieve the settlement and the degree of competence and care brought to bear by the representatives of the plaintiff class in reaching the settlement.

Plaintiffs submit that from the substantive analysis of the terms of settlement the Court should conclude that the benefits provided to the class fully justify the dismissal of this action without a decision on the merits and the imposition of the covenant not to sue to which we have agreed. The process of settlement from which this settlement results was exemplary. After years of negotiations, the new Governor convened discussions in which the plaintiffs, the State education agencies, and the intervenor school districts each brought about changes to the proposals, leading to a result that was so widely supported that the statutes implementing the settlement were approved by a unanimous vote in the Assembly and by two-thirds of the Senate.

In short, both the substance of this settlement and the process that led to it establish that it should be approved.

I. FACTUAL BACKGROUND

A. Procedural History

Nearly one hundred California schoolchildren who attended public schools with substandard learning conditions filed this case on May 17, 2000. Plaintiffs brought claims against the State of California, the California Board of Education, the California Department of Education, and the California Superintendent of Schools (collectively "defendants").[1] Plaintiffs' Complaint included seven causes of action: (1) a claim for violation of the Equal Protection Clauses of the California Constitution, Article I, Section 7(a) & Article IV, Section 16(a); (2) a claim for violation of Article IX, Sections 1 and 5 of the California Constitution (the education clause and the free schools clause); (3) a claim for violation of the Due Process Clauses of the California Constitution, Article I, Sections 7(a) & 15; (4) a claim for violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and 34 C.F.R. § 100.3(b)(2)) (for maintaining schools in a manner that has a racially discriminatory impact); (5) a claim for violation of

[1] Plaintiffs amended their complaint on August 14, 2000. All subsequent citations herein refer to the amended complaint and are cited as "Pls.' Complaint."

Education Code Section 51004; (6) a claim for violation of California Code of Civil Procedure Section 526a; and (7) a claim for declaratory relief.

Plaintiffs' Complaint alleged:

> The Constitution and laws of California require the State to ensure the delivery of basic educational opportunities for every child in California and vest the State with ultimate responsibility for the State's public elementary and secondary school system. The State therefore has a nondelegable duty to ensure that its statewide public education system is open on equal terms to all and that no student is denied the bare essentials to obtain an opportunity to learn. The deplorable conditions at the schools the student Plaintiffs must attend fall fundamentally below even baseline standards for education. The conditions enumerated here are the direct and foreseeable consequence of the State's failure to discharge its duty; these conditions could not exist if State officials carried out their mandate.

(Pls.' Complaint at 7.)

Plaintiffs' Complaint described the substandard conditions in which plaintiff schoolchildren were being asked to learn. Plaintiffs' schools lacked basic educational tools and conditions: instructional materials, safe facilities, and trained teachers. Some plaintiffs were forced to attend schools on the Concept 6 calendar, under which students had 17 fewer instructional days than students on a regular school calendar.

On September 25, 2000, the State of California filed a demurrer to plaintiffs' Complaint and a motion to stay the case. The State argued that plaintiffs should be required to amend the complaint to state precisely what "the State ha[d] done wrong" and what precisely it "should be required to do in the future." (State's Mem. Supp. Dem. at 4.) The State also argued that plaintiffs should be required to exhaust all administrative remedies before proceeding with the lawsuit. (*Id.* at 5.)

The Court denied the State's demurrer and motion to stay on November 14, 2000. The Court found that plaintiffs need not exhaust administrative remedies because such remedies were not capable of addressing the violations that plaintiffs' attacked: that the State "does not have the legally required oversight and management systems in place" to address substandard school conditions. (Order at 2.) The Court stated:

> [A]s plaintiffs represented to the Court at the hearing on the demurrer, this case is exclusively about the State's system of oversight and that system's alleged

> inadequacies and failures. The lawsuit is aimed at ensuring a system that will either prevent or discover and correct such deficiencies going forward. The specific deficiencies that take up so much of the Complaint are evidence of an alleged breakdown in the State's management of its oversight responsibilities. As such, they are the result, rather than the fact, of the allegedly unconstitutional behavior – the consequential injury, rather than the violation. Plaintiffs' representation, to which the Court will hold plaintiffs, has and will have ramifications to all stages of the case, including pleading, class certification, motion practice, trial, and remedies.

(*Id.*) The Court further found that plaintiffs had met the pleading requirements by alleging that "the State is responsible for maintaining an educational system meeting the necessary minimum standards, that it has failed to do so because its oversight and management systems are non-existent or inadequate, and that the alleged educational inadequacies result from the State's failure." (*Id.* at 3.)

On December 11, 2000, the State of California brought a cross-complaint against the 18 districts from which the Amended Complaint identified schools as examples of the defendants' constitutional and statutory violations. The State reiterated nearly all of the factual allegations in plaintiffs' Amended Complaint. The State then alleged that it has a direct interest in ensuring that the districts comply with their duties and obligations since it may be required to act where the districts have failed. (*See, e.g.*, Cross-Complaint at 16-17.) For each school addressed in the complaint, the State alleged that if the conditions in fact exist as described by plaintiffs and result in depriving students of basic educational opportunities equal to those received by children in other schools, then the district has violated its duties and obligations under applicable statutes and regulations and under the California Constitution. (*See, e.g., id.* at 17.) The State further alleged that the districts had "the power and ability to correct each of the conditions of which plaintiffs complain" and that the districts have a mandatory duty to correct conditions that deprive students of "basic educational opportunities equal to those received by children in other schools." (*Id.* at 18.)

In response to the State's cross-complaint, eleven school districts moved to sever the cross-complaint and stay the proceedings against the cross-defendants. The districts contended that plaintiffs' Amended Complaint "involves the relatively narrow issue of whether the State has

failed to implement a constitutionally adequate process to oversee its education system." (Districts' Mem. Supp. Mot. Sever at 2.)

The Court granted the districts' and plaintiffs' motion severing and staying the cross-complaint. The Court found that the cross-complaint "raises separate and distinct issues and seeks relief different in kind, quality, and scope from plaintiffs' First Amended Complaint." (May 31, 2001 Order Granting Mots. Sever Stay Proceedings at 2.) Subsequently, the Court granted motions to intervene by Los Angeles Unified School District, Long Beach School District, and the California School Boards Association.[2]

On January 16, 2001, the State filed a motion for judgment on the pleadings as to plaintiffs' fifth cause of action for a violation of California Education Code § 51004. The State alleged that this statute did not provide plaintiffs with a private right of action. Although plaintiffs believed that a good faith argument could be made to assert a private right of action pursuant to California Education Code § 51004, they did not oppose the motion. Plaintiffs' decision not to oppose was based on the fact that a judgment on the fifth cause of action would not have affected the remedy sought in any significant manner. Accordingly, plaintiffs believed that, in the interests of judicial economy, no further adjudication of this issue was warranted. Plaintiffs' complaint was amended so as to withdraw the fifth cause of action for violation of Education Code § 51004.

Concurrent with the State's motion regarding plaintiffs' fifth cause of action, the State filed a motion for judgment on the pleadings as to plaintiffs' sixth cause of action for violation of California Code of Civil Procedure Section 526a. The State alleged that it was not subject to suit under §526a and that the allegations contained in plaintiffs' First Amended Complaint were insufficient to state a cause of action under §526a. On February 8, 2001, the Court granted defendants' motion and dismissed plaintiffs' sixth cause of action, but made clear that the motion did not address the issue of whether the taxpayer plaintiffs in the lawsuit, Joscelyn McCauley and

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[2] The Court later granted San Francisco Unified School District's motion to intervene.

Bichnoc Cao have standing. The standing of Joscelyn McCauley and Bichnoc Cao to bring claims as taxpayers has not been challenged.

Plaintiffs filed their motion for class certification on March 23, 2001 and designated 15 class representatives. The class representatives attended schools in the Los Angeles, San Francisco, Oakland, Ravenswood, Merced and Watsonville school districts. After extensive briefing, discovery (including the depositions of the class representatives), and presentation of evidence, the Court certified the case as a class action on October 1, 2001. (Order Granting Mot. Certify Class.) The class was defined as:

> All students who are attending or will attend public elementary, middle or secondary schools in California who suffer from one or more deprivations of basic educational necessities. The specific deprivations are as follows:
>
> A) a lack of instructional materials such that the student does not have his or her own reasonably current textbook or educational materials, in useable condition, in each core subject (1) to use in class without sharing with another student; or (2) to use at home each evening for homework;
>
> B) a lack of qualified teachers such that (1) the student attends a class or classes for which no permanent teacher is assigned; or (2) the student attends a school in which more than 20% of teachers do not have full, non-emergency teaching credentials; or (3) the student is an English Language Learner ("ELL") and is assigned a teacher who has not been specially qualified by the State to teach ELL students;
>
> C) inadequate, unsafe and unhealthful school facilities such that (1) the student attends classes in one or more rooms in which the temperature falls outside the 65-80 degrees Fahrenheit range; or (2) the student attends classes in one or more rooms in which the ambient or external noise levels regularly impede verbal communication between students and teachers; or (3) there are insufficient numbers of clean, stocked and functioning toilets and bathrooms; or (4) there are unsanitary and unhealthful conditions, including the presence of vermin, mildew or rotting organic material;
>
> D) a lack of educational resources such that (1) the school offers academic courses and extracurricular offerings in which the student cannot participate without paying a fee or obtaining a fee waiver; or (2) the school does not provide the student with access to research materials necessary to satisfy course instruction, such as a library or the Internet; or
>
> E) overcrowded schools such that (1) the student is subject to a year-round, multi-track schedule that provides for fewer days of annual instruction than schools on a traditional calendar provide; or (2) the student is bused excessive distances from his or her neighborhood school; or (3) the student attends classes in one or more rooms that are so overcrowded that there are insufficient seats for each enrolled student to have his or her own seat or where the average square footage per student is less than 25 square feet.

(Pls.' Mem. P. & A. Supp. Mot. Class Certification at 3-4.) In its order granting the motion, the Court found that plaintiffs sought "generalized equitable relief at the state level," not "relief

specific to particular students, schools, or school districts." (Order Granting Mot. Certify Class at 1.) The Court found that if "Plaintiffs' theory is correct and the Plaintiffs' proof sufficient, any relief would direct changes at the state level that would presumably require changes of some sort to the way the State manages education generally." (*Id.* at 3.) Accordingly, "relief would necessarily flow to absent putative class members." (*Id.*) The Court further found that while class certification was not necessary to fashion or enforce a remedy, benefits would accrue from class certification, including avoiding the risk of duplicative actions, removing the risk of mootness, and protecting the State from successive suits by binding absent class members to the result of the case. (*Id.*) Subsequently, plaintiffs filed voluntary dismissals of individual plaintiff claims given that such plaintiffs were now members of the class. (*See* Pls.' Mem. P. & A. Supp. Mot. Voluntary Dismissals Without Prejudice, filed October 16, 2001.)

On January 15, 2002, the State filed a motion for summary adjudication of no duty to police or monitor district fees. The State alleged that "no agency or official of the State owes any plaintiff a duty to police or monitor the fees charged by school districts." (State's Mem. P. & A. Supp. Mot. Summ. Adjudication No Duty to Police or Monitor District Fees at 1.) Following a seven-month stay of the litigation, plaintiffs moved for dismissal of plaintiffs' claim that defendants had failed to take effective measures to address fees charged in California schools in violation of Article IX, section 5 of the California Constitution (the "Free and Common Schools Clause") (a component of plaintiffs' Second Cause of Action). Plaintiffs' decision to dismiss the fees claim was based on an interest in streamlining the case by focusing on the claims that go to the core of the remedies sought. The Court affirmed plaintiffs' dismissal of this claim without prejudice. In light of this dismissal, the State withdrew its motion for summary adjudication of no duty to police or monitor district fees.

On November 25, 2002, plaintiffs also moved to dismiss plaintiffs' Title VI claim (plaintiffs' Fourth Cause of Action). Plaintiffs moved to dismiss this claim in light of the United States Supreme Court's ruling indicating that there is no private right of action under Title VI with respect to regulations that forbid funding recipients from relying on criteria that have a discriminatory effect. *See Alexander v. Sandoval*, 532 U.S. 275 (2001). The *Sandoval* case thus

appeared to limit plaintiffs' chance for success under this claim. Subsequently, plaintiffs moved for leave to add a cause of action under the recently amended California analog to Title VI, Government Code § 11135, which provides a private right of action against the State or a State agency that carries out programs or activities that have a racially discriminatory impact. Since the filing of plaintiffs' complaint, this statute had been amended to explicitly recognize that administrative exhaustion is not required. The Court denied plaintiffs' motion finding that "to add this claim into the case at this point would substantially delay getting to trial in this case." (May 1, 2003 hearing transcript at 28:6-7.)

On May 5, 2003, the State filed its motion for judgment on the pleadings as to the second cause of action. The State alleged that article IX, § 1 and § 5 of the California Constitution was not governed by *Butt v. State*, was not self-executing, and did not create a right to "basic educational equality." (State's Mem. Supp. Mot. J. on Pleadings as to Second Cause of Action at 1-2.) On July 10, 2003, the Court granted the State's motion finding that plaintiffs had not stated a cause of action given that the thrust of plaintiffs' claim was that the "State's failure adequately to oversee and manage California's public system of public education deprives Plaintiffs of their rights under Article IX, Sections 1 and 5." (Order Granting Mot. J. on Pleadings as to Second Cause of Action at 1.) The Court stated:

> [T]he violation alleged in this case is limited to the failure of the State's system of oversight and management of public education. Plaintiffs specifically eschewed a challenge based on the specific failings of particular schools and districts to provide education necessities, perhaps recognizing the risk that such a suit might have had to give way, at least in the first instance, to available administrative remedies. Thus, this is not a case to require any particular level, kind, or quality of teachers, facilities, or textbooks to be provided to the Plaintiffs. Nor does it address the level of funding for education provided generally in the state or particularly for the Plaintiffs. The narrow focus on the state's oversight and management of public education distinguishes this case from the other cases decided under California's constitution and from the various out-of-state cases decided under arguably similar constitutional provisions that plaintiffs have cited. This Court need not decide the broad question whether Section 5 creates a 'substantive actionable right to education' (Plaintiffs' Opposition at 1) nor the more specific question whether students could rely on Section 5 to argue that the constitution requires they receive better teachers, facilities, or textbooks. This Court need only decide whether plaintiffs have stated a cause of action and may sue under this provision to redress the alleged deficiencies in the State's system of oversight and management.

(*Id.* at 4.)

On June 10, 2003, plaintiffs filed a motion for summary adjudication of state's duty to ensure equal access to instructional materials.[3] The Court denied a summary judgment on the issue, concluding that "the Court has determined there are material factual issues in dispute." (Order Re Motion for Summary Adjudication of the State's Duty to Ensure Equal Access to Instructional Materials and Motion Re Precedence of Issues at 1.)

As discussed in detail above, both sides have filed numerous dispositive motions in an attempt to narrow and define the legal issues in the case. As a result of the State's dispositive motions and plaintiffs' voluntary dismissal of various claims, at the time plaintiffs began the most recent round of negotiations, plaintiffs' active claims were: plaintiffs' first cause of action for violation of the Equal Protection Clauses of the California Constitution, plaintiffs' third cause of action for violation of the Due Process Clauses of the California Constitution[4], and plaintiffs' seventh cause of action for declaratory relief.

Over the past four years of litigation, the parties have also engaged in extensive discovery. Nearly one hundred and fifty witnesses testified in depositions, over one thousand document requests have been propounded resulting in production of nearly 800,000 pages of documents, and nearly two thousand interrogatories have been served. Plaintiffs and defendants have also conducted extensive expert discovery involving more than 30 expert witnesses.

B. Settlement Process

On October 22, 2001, the Court ordered the parties to engage in settlement negotiations, recommending that the Honorable Patrick J. Mahoney act as mediator. (Pretrial Scheduling Order.) Judge Mahoney held mediation sessions on December 17, 2001, January 3, 2002,

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[3] Plaintiffs subsequently filed similar motions relating to facilities and instructional days, but these motions were taken off calendar following the Court's Order regarding the instructional materials motion.

[4] During a brief gap during the time the case was stayed, the State filed a Motion for Judgment on the Pleadings as to the Third Cause of Action. This motion was taken off calendar when the stay resumed and was never heard by the Court.

January 16, 2002, January 26, 2002, and January 31, 2002. (Londen Decl. at ¶ 2.) During these sessions, lead counsel for the parties were present and negotiations generally lasted the entire day. (*Id.*) When it appeared that progress toward settlement was possible, the parties agreed to stay the litigation. (*Id.*)

On February 1, 2002, the Court ordered a stay of the litigation to allow the parties an opportunity to focus exclusively on mediation. (*Id.* at ¶ 3.) Over the following seven months, the parties continued to attend mediation sessions with Judge Mahoney. (*Id.*) The parties met on: February 22, 2002, March 1, 2002, April 8, 2002, April 17, 2002, May 20, 2002, June 24, 2002, July 12, 2002, August 9, 2002, and August 29, 2002. (*Id.*) The parties negotiated vigorously, prepared lengthy submissions to the mediator responding to his questions, and exchanged multiple settlement proposals. (*Id.*) The parties also held many discussions regarding settlement among the entire group and among subsets of the group. (*Id.*) Ultimately, however, the parties were unable to reach agreement on settlement and decided to return to litigation in October, 2002. (*Id.*)

While litigation continued at a fast pace, the parties agreed to continue mediation discussions with Judge Mahoney in the Spring of 2003. (*Id.* at ¶ 4.) Judge Mahoney held mediation sessions with the parties on March 3, 2003, June 2, 2003, June 18, 2003, August 1, 2003, and September 5, 2003. (*Id.*) In addition to the in-person meetings, the parties also engaged in extensive telephonic meetings both among the entire group and among subsets of the group whom Judge Mahoney brought together. (*Id.*)

When Governor Arnold Schwarzenegger was voted into office, the parties postponed pending settlement discussions until the new administration had an opportunity to review the substance and status of the litigation. (*Id.*) On November 24, 2003, at the request of the parties, the Court ordered another stay of the litigation again to focus on settlement. (*Id.*) With the approval of Judge Mahoney, plaintiffs accepted the invitation of the Office of Governor Schwarzenegger to negotiate directly. (*Id.* at ¶ 5.)

From the start, the new administration approached settlement discussions as an opportunity to deal with problems in public education. (*Id.*) During the discussions, the

administration's team included senior officials in the Office of the Governor with regular direct supervision by Governor Schwarzenegger himself. (*Id.*) In May 2004, the Governor's Legal Affairs Secretary notified counsel for the parties that these discussions had progressed to the point where an agreement to resolve the litigation was possible and within reach. (*Id.* at ¶ 6.) His letter set forth Governor Schwarzenegger's principles of educational reform, which the parties agreed would form the basis for legislative solutions to specific problems facing California schools. (*Id.*) Throughout May and June, the parties held settlement meetings in which they continued to discuss various proposals that would further the Governor's principles. (*Id.*)

On June 30, 2004, counsel for all parties appeared before this Court for a status conference regarding the parties' efforts to settle this case. (*Id.* at ¶ 7.) The parties reported on their work together to draft proposals for legislation on the substantive issues raised by plaintiffs' case. (*Id.*) The parties further reported that, on several issues, the proposals had reached the stage that plaintiffs' counsel could recommend to the plaintiff class representatives that the proposals should be the basis for a settlement. (*Id.*)

The parties continued to negotiate after the status conference, meeting many times and circulating numerous drafts. (*Id.* at ¶ 8.) Settlement negotiations were attended by lead counsel, negotiations were vigorous, and proposals were thoroughly analyzed and debated. (*Id.*) Counsel for all parties worked hard to advocate for their clients' positions on how best to improve California's schools. (*Id.*) In late July, the State's counsel presented the parties with the State's final proposal for settling the case. (*Id.*) This proposal provides benefits to the class that far exceed those to which the State had agreed previously. (*Id.*) The intervenors' advocacy for increased funding to support education reform substantially benefited the class. (*Id.*) In addition, LAUSD, in particular, has committed significant effort and resources to expanding its facilities capacity in order to phase out the use of Concept 6. (*Id.*)

In late July and August, counsel for plaintiffs spoke with eleven of the thirteen class representatives about the parties' Settlement Agreement.[5] (*Id.* at ¶ 9, 10.) Counsel explained the settlement terms and the settlement process, and discussed why they believed the settlement to be a fair and reasonable resolution of the case. (*Id.*) All of these class representatives approved the proposed settlement and authorized plaintiffs' counsel to move forward with the proposed agreement. (*Id.*)

C. Terms of the Settlement

On August 13, 2004, the parties reached agreement on the terms of the proposed settlement. (*Id.* at 11.) The Settlement Agreement provided for a package of legislative proposals aimed at ensuring that all students will have books in specified subjects and that their schools will be clean and in safe condition, and that they will have improved access to qualified teachers. (*Id.*) (Attached as Exh. A to the Londen Decl. are the Settlement Implementation Agreement, Covenant Not to Sue and Provision Regarding Attorneys Fees.)

On August 17, 23, and 24, 2004, the California Legislature's Joint Committee to Develop a Master Plan heard testimony regarding the package of legislative proposals. (*Id.* at 12.) On August 24, 2004, four of the bills in the legislative package were proposed; the fifth bill was proposed on August 27, 2004. (*Id.*) The Legislature passed all five bills in the legislative package on August 27, 2004. (*Id.*)

On September 29, 2004, Governor Schwarzenegger signed laws implementing the legislative proposals set forth in the parties' Settlement Agreement. (*See* 9/29/04 Press Release

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[5] Plaintiffs' counsel have discussed settlement with Cindy Diego; Lizette Ruiz; the guardians for Moises Canel; the guardian for Krystal Ruiz; Manuel Ortiz and his guardian; the guardian for Carlos and Richard Ramirez; D'Andre Lampkin, Delwin Lampkin, and their guardian; and the guardian for Samuel and Jonathan Tellechea. (Londen Decl. at ¶ 9.) Plaintiffs' counsel have been unable to schedule meetings with Silas Moultrie despite repeated attempts and letters sent to his last known address. (*Id.* at ¶ 10.) As mentioned in plaintiffs' Notice of Settlement, plaintiffs' counsel has been informed by the guardian for Carlos Santos, Marcelino Lopez, that he does not feel comfortable discussing the details of the Settlement Agreement because he is now a member of the Ravenswood District school board, and lawyers for the district have advised him that there is an appearance of a conflict. (*Id.*) Mr. Lopez has stated that he trusts that counsel will do what is right for the class and approves of settlement. (*Id.*)

from the Office of the Governor, *Governor Schwarzenegger Signs Landmark Education Reforms Into Law* attached as Exh. B to Londen Decl.) The education laws included:

- SB 550 & AB 2727 (establishing minimum standards regarding school facilities, teacher quality, and instructional materials and an accountability system to enforce these standards);
- AB 1550 (phasing out the use of the Concept 6 calendar by July 1, 2012 and setting benchmarks for districts to reach this goal);
- AB 3001 (encouraging placement of qualified teachers in low performing schools, enhancing an existing oversight mechanism to ensure that teachers are qualified to teach the subject matter to which they have been assigned and qualified to teach English learners; and streamlining the process for teachers from out-of-state to teach in California schools); and
- SB 6 (providing up to $800 million beginning in the 2005-06 fiscal year for districts to address emergent facility repair projects and approximately $25 million in 2004-05 to assess the condition of schools in the bottom three deciles).

(*Id.*; *see also* SB 550 & AB 2727, AB 1550, AB 3001, and SB 6 attached as Exhs. C - G to Londen Decl.[6])

The settlement includes a covenant not to sue under which members of the plaintiff class may not initiate new suits against defendants based on the claims pursued in this litigation.[7] The covenant not to sue will be in effect for four years from the date of approval of the settlement, except that the covenant not to sue extends through September 30, 2006, for claims of

[6] All bills are from the 2003-2004 Session of the California Legislature and are referred to by their short forms of SB 550, SB 2727, AB 1550, AB 3001 and SB 6.

[7] The Covenant Not to Sue expressly disclaims coverage of claims based on denial of high school graduation based on results of the California High School Exit Examination.

constitutional violations regarding deficiencies in the quality of teachers.[8] As is discussed further below, the shorter period for the covenant not to sue as to claims regarding teachers reflects the Federal deadline for compliance with provisions of the No Child Left Behind Act as to teacher quality.

The 2004-05 State budget includes funding for some of the financial terms of the settlement by including $138.7 million for new instructional materials in decile 1-2 schools and approximately $50 million to implement other settlement goals. (Londen Decl. at ¶ 15.) The budget also maintains the instructional materials categorical program, with funding for this year of $363 million before the addition of the new instructional materials funding for decile 1 and 2 schools. (*Id.*)

D. Preliminary Approval

On August 23, 2004, the Court preliminarily approved the parties' Settlement Agreement. (Order re Proposed Settlement at 1.) The Court ordered plaintiffs to submit a motion for approval of the content, form, and manner of giving notice to the class once the legislative proposals set forth in the Settlement Agreement were enacted into law. (*Id.* at 1.) The Court further ordered plaintiffs to prepare a schedule for submission of comments on the Settlement Agreement by class members and the parties and a final approval hearing.

Following the enactment of the legislation discussed above, plaintiffs submitted a Motion for Approval of Class Notice and Schedule. Plaintiffs await the Court's approval of the proposed notice.

II. THE PROPOSED SETTLEMENT IS FAIR AND DESERVES APPROVAL.

The final approval of a class action settlement is a matter within the broad discretion of the trial court based upon the circumstances of the case. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citation omitted). Courts are guided, however, by the judicial policy

[8] This earlier end date for the covenant not to sue does not apply to claims about the quality of teachers in rural schools for which the No Child Left Behind Act provides an extended compliance deadline.

favoring settlements. *See Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1607-08 (1991). "[V]oluntary conciliation and settlement are the preferred means of dispute resolution . . . especially . . . in complex class action litigation." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983).

The Court's role in reviewing a class action settlement is "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801 (citation omitted). In making this determination, the court should consider relevant factors, including "the strength of plaintiffs' case"; "the risk, expense, complexity and likely duration of further litigation"; "the amount offered in settlement"; "the extent of discovery completed and the stage of the proceedings"; "the experience and views of counsel"; and "the reaction of class members to the proposed settlement." *Id.* at 1801. Furthermore, courts have found that a presumption of fairness exists where "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802 (citation omitted). As explained below, consideration of these factors weighs strongly in favor of final approval of the settlement in this case.

A. The Settlement Benefits the Class.

This settlement should be approved because it favorably resolves the case. The settlement benefits the class both by providing for improvements in their schools and by providing additional funding. Class members will benefit from new standards requiring provision of instructional materials, setting a floor for quality of school facilities, and relating to teacher training, as well as from the elimination of the Concept 6 calendar. Class members will also benefit from new accountability mechanisms and complaint procedures to encourage compliance with the standards. In addition, approximately $1 billion will be available to address the systemic problems raised in the lawsuit. These settlement terms compare favorably with the theory of liability on which plaintiffs based the suit.

The lawsuit was premised principally on the theory that the State's "ultimate responsibility" for education, as recognized in more than a hundred years of decisions from California state courts[9] and most directly reaffirmed in *Butt v. State*, 4 Cal. 4th 668, 681, 684 (1992), includes responsibility to ensure equal access to basic tools and conditions for learning, including provision of instructional materials, decent school facilities, and trained teachers, for all California public school students. (Pls.' Complaint at 7-12; Pls.' Liability Disclosure Statement at 1, 26-27.) Plaintiffs argued, therefore, that the State has a duty to intervene to ensure provision to each public school student of, at least: (1) textbooks or other instructional materials to use in class and at home for homework, (2) school facilities that are not crowded and that are clean and safe, and (3) trained teachers. (Pls.' Complaint at 7-12, 67-69; Pls.' Liability Disclosure Statement at 26-32.)[10] Plaintiffs criticized the existing oversight structure for public education for failing to assess students' access to these critical tools and conditions for learning and for failing

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[9] *See Salazar v. Eastin*, 9 Cal. 4th 836, 858 (1995) ("the state has ultimate responsibility for the constitutional operation of its schools"); *Kennedy v. Miller*, 97 Cal. 429, 431 (1893) ("Article IX of the constitution makes education and the management and control of the public schools a matter of state care and supervision."); *see also San Francisco Unified Sch. Dist. v. Johnson*, 3 Cal. 3d 937, 951 (1971) ("Education, including the assignment of pupils to schools, is plainly a state function."); *Hall v. City of Taft*, 47 Cal. 2d 177, 181 (1956) ("[t]he public school system is of statewide supervision and concern"); *Piper v. Big Pine Sch. Dist.*, 193 Cal. 664, 669 (1924) (Public schooling "is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the constitution."); *City of El Monte v. Comm'n on State Mandates*, 83 Cal. App. 4th 266, 278-279 (2000) ("[E]ducation is the ultimate responsibility of the state. The principle is undeniable . . . ."); *Cal. Teachers Ass'n. v. Hayes*, 5 Cal. App. 4th 1513, 1534 (1992) ("In this state, education is a matter of statewide rather than local or municipal concern."); *Johnson v. San Diego Unified Sch. Dist.*, 217 Cal. App. 3d 692, 698 (1990) (same); *Tinsley v. Palo Alto Unified Sch. Dist.*, 91 Cal. App. 3d 871, 903 (1979) ("[I]t is clear that in California, . . . the responsibility for furnishing constitutionally equal educational opportunities to the youth of the state is with the state, not solely in the local entities it has created.").

[10] *See also* Pls.' Mem. P. & A. Supp. Mot. Summ Adjudication of State's Duty to Ensure Equal Access to Instructional Materials (hereinafter "Pls.' Mem. P. & A. Supp. Mot. Textbooks"), Pls.' Mem. P. & A. Supp. Mot. Summ. Adjudication of State's Duty to Ensure Equal Access to Decent School Facilities (hereinafter "Pls.' Mem. P. & A. Supp. Mot. Facilities"), Pls.' Mem. P. & A. Supp. Mot. Summ. Adjudication of State's Duty to Ensure Equal Access to Instructional Days (hereinafter "Pls.' Mem. P. & A. Supp. Mot. Concept 6").

to rectify deprivations when those deprivations occurred. (Pls.' Liability Disclosure Statement at 234-324; Pls.' Mem. P. & A. Supp. Mot. Textbooks at 19-23; Pls.' Mem. P. & A. Supp. Mot. Facilities at 55-59.)

Regarding instructional materials, plaintiffs charged that Education Code § 60119, which required district governing boards to hold a hearing once a year and notify classroom teachers and the public if the governing board determines that schools have "insufficient textbooks or instructional materials," was constitutionally deficient because the statute did not define textbook sufficiency, did not provide a mechanism for ensuring that textbook insufficiency problems be solved, and allowed textbook shortages to languish unremedied for two years. (Pls.' Liability Disclosure Statement at 260-65; Pls.' Mem. P. & A. Supp. Mot. Textbooks at 20-21.)

Regarding school facilities and overcrowding, plaintiffs charged that the State lacked minimum standards for facilities maintenance and failed to monitor and collect data regarding facilities needs in schools. (Pls.' Liability Disclosure Statement at 285-90; Pls.' Mem. P. & A. Supp. Mot. Facilities at 55-57.) In addition, plaintiffs criticized the State system of funding school facilities needs for failing to provide sufficient funds to satisfy needs, for failing to target those funds it does provide to schools with greatest need, and for failing to monitor how funds are used and whether facilities maintenance repairs are completed. (Pls.' Mem. P. & A. Supp. Mot. Facilities at 57-58.) Plaintiffs charged that the State failed to account for local mismanagement or failure, instead providing facilities dollars on the basis of district success in completing applications for funds rather than on the basis of need. (Pls.' Mem. P. & A. Supp. Mot. Facilities at 58-59.) Finally, plaintiffs charged that the State actively encouraged districts' use of the educationally detrimental Concept 6 multitrack, year-round calendar that shortens the school year by 17 days and operates in severely overcrowded schools. (Pls.' Mem. P. & A. Supp. Mot. Concept 6 at 27-28.)

Regarding teachers, plaintiffs charged that, although the State has had notice at least since 1977 that students have suffered dramatically unequal access to fully credentialed teachers and, similarly, has for decades been aware that English Language Learners lack access to teachers who train them, the State nonetheless has not developed an oversight system that could prevent,

correct, or compensate for those inequalities. (Pls.' Liability Disclosure Statement at 46, 236.) Plaintiffs criticized the State for not having set standards regarding distribution of qualified teachers, for not having taken sufficient steps to recruit and retain trained teachers, including teachers of English Learners, for creating unnecessarily onerous requirements for out-of-state teachers to obtain teaching credentials in California, and for permitting the use of undercredentialed teachers to become the norm in many schools and districts. (Pls.' Liability Disclosure Statement at 236-258.)

For all three content areas, plaintiffs charged that existing systems for reviewing schools did not require review of the availability of textbooks, teacher qualifications, or facilities quality. (Pls.' Mem. P. & A. Supp. Mot. Textbooks at 21-22.) Likewise, plaintiffs criticized the statutorily required School Accountability Report Cards for not including requirements that schools report on the availability of textbooks, teacher qualifications, or facilities quality. (*See, e.g.*, Pls.' Mem. P. & A. Supp. Mot. Textbooks at 21; Pls.' Liability Disclosure Statement at 265.)

1. The Settlement Terms Address the Subjects of Plaintiffs' Contentions.

The terms of the settlement resolve many of the critical oversight failures plaintiffs identified in the litigation and represent a fair compromise of the suit. Whereas plaintiffs complained that the State failed to take ultimate responsibility for ensuring fundamentally equal access to basic educational tools and conditions, the settlement provides a statewide system of standards regarding these basic educational tools and conditions, monitoring for satisfaction of those standards, and targeted intervention, focused primarily on the lowest-performing schools, to correct failure to satisfy the standards.

a. Under the Settlement Legislation There Will Be State Standards for Educational Conditions.

Specifically, the implementing legislation sets specific minimum standards for school facilities and for provision of textbooks and instructional materials. Senate Bill 550 provides a new statutory definition of "good repair" for school facilities that requires that "the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction" and that

that instrument must be developed by January 25, 2005. (SB 550, § 3.) In addition, SB 550 requires that by September 1, 2006, "the Legislature and Governor shall, by statute, determine the state standard [for good repair of school facilities] that shall apply for subsequent fiscal years." (SB 550, § 3.) Likewise, SB 550 defines "sufficient textbooks or instructional materials" to mean that "each pupil, including English learners, has a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments." (SB 550, § 18.)

The defendants were not willing to adopt plaintiffs' proposal that there should be a ceiling on the percentage of teachers in any school who lack full credentials. Defendants argued that the requirements of the federal No Child Left Behind Act that every teacher be highly qualified and compliance with those requirements, in accordance with the federal deadline, by the end of 2006, is sufficient. (Londen Decl. at ¶ 16.) The State has enacted new definitions for teacher "misassignments" and "teacher vacancies" which will help to ensure that teachers are properly trained to teach their subject matter and to teach English Learners, and which will work to limit the practice of creating classes without a permanent teacher assigned. (*Id.*)

b. The Settlement Legislation Enhances Oversight to Prevent or Detect and Correct Educational Inequalities.

The settlement legislation provides for multiple levels of oversight to ensure compliance with those standards. The legislation requires that each classroom contain a notice articulating students' right to sufficient instructional materials and to schools that are safe and clean and where to obtain a form to file a complaint if necessary. (SB 550, § 12 and AB 2727, § 1). The legislation also requires that each school district hold a public hearing no later than the eighth week of the school year to determine whether each pupil in the district has sufficient textbooks or instructional materials. (SB 550, § 18.) The legislation requires each district to maintain its own facilities inspection program to monitor facilities maintenance. (SB 550, § 7.) The legislation requires that each school include in its annual School Accountability Report Card, which is published on the Internet and is made available in paper form to parents who request it, accurate information regarding sufficiency of instructional materials, the quality of facilities maintenance, and teacher quality. (SB 550, § 10-11.)

In addition, the legislation requires County Superintendents to inspect, within the first four weeks of the school year, each of the schools in the bottom three Academic Performance Index deciles in the county to determine whether the school facilities are in good repair and whether each student has sufficient textbooks and instructional materials.[11] (SB 550, § 1.) At least one quarter of these visits must be unannounced and County Superintendents must report the results of these visits to each school district's school board on a quarterly basis. (SB 550, § 1.) If a County Superintendent determines that a school lacks sufficient instructional materials, the legislation provides a series of steps for corrective action, culminating in the actual purchase and distribution of books. (SB 550, § 1.) This bill also requires a compliance audit to include the verification of the reporting requirements for the sufficiency of textbooks and instructions materials, teacher assignments and the accuracy of information reported on the school accountability report card. (SB 550, § 2.)

The implementing legislation also creates oversight for teaching hiring, retention and misassignment.[12] The implementing legislation structures a system of oversight by requiring review and reporting of detailed information on teacher hiring, retention and assignment amongst various administrative bodies including the county superintendent, the Commission on Teacher Credentialing, the Legislature, the Governor, the Department, and the school districts. For example, Assembly Bill 3001 requires that the Commission on Teacher Credentialing report to the Legislature and the Governor specific information regarding the number of classroom

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[11] For single-school-district counties, including Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco, the legislation provides that the County Superintendent must contract with another county office of education or an independent auditor to satisfy these obligations. (SB 550, § 1.)

[12] Misassignment means the placement of a certified employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential to the placement of a certified employee in a teaching or services position that the employee is not otherwise authorized by statute to hold. (AB 2727, § 1.)

teachers who have received credentials, internships and emergency permits in the previous fiscal year and the total number of teachers who do not meet certain requirements and credentials.[13]

The bill requires the county superintendents of schools, who already monitor and review school districts' certification and assignment practices, to give priority to schools ranked in deciles 1 to 3 on the state Academic Performance Index and to investigate schools' and districts' efforts to ensure that any credentialed teacher in an assignment requiring a certificate or training to teach English learners has completed the necessary requirements. (AB 3001, § 3, 9, 11.) This bill also provides the option for county superintendents to assign the Fiscal Crisis & Management Assistance Team to districts to review hiring, credentialing, retention and assignment practices. (*Id.*, § 1.) The bill requires that the county superintendent submit an annual report summarizing the results of assignment and monitoring to the California Department of Education identifying whether, in any classes in which 20% or more pupils are English learners, the assigned teachers possess the proper training to teach English learners. (*Id.*, § 3.)

The bill contemplates continued involvement by the Legislature. The Superintendent of Public Instruction must submit a summary of the reports submitted by county superintendents of schools to the Legislature and the Legislature, in turn, may hold public hearings regarding the distribution of credentialed and highly qualified teachers. (*Id.*, § 3.)

In addition to the foregoing checks and balances and levels of oversight, the Legislature provides the following mechanisms to make schools accountable with regard to teacher hiring, credentialing and assignment: providing parents, teachers, and students a formal complaint process to identify and resolve teacher vacancy or misassignment (SB 550, § 12); requiring each

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[13] Assembly Bill 3001 also facilitates teacher hiring by removing several requirements that have impeded the credentialing in California of some teachers from out-of-state. (Londen Decl. at ¶ 16.) For example this new law waives the basic skills proficiency test if the Commission determines that the teacher licensing body of that state requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable to passage of the state basic skills proficiency examination. Applicants from another state would not be required to meet the fifth-year program or induction program completion requirements if the commission determines that preparation in another state is comparable and equivalent to the specific requirement. (AB 3001, § 5.)

school's accountability report card to include information on misassignments of teachers and teacher vacancies; requiring each school to comply with an audit that includes verification of the reporting requirements for teacher misassignments and the accuracy of information reported on the school accountability report card (SB 550, §§ 2, 10, 13); and, by making funding contingent upon schools having action plans that contain strategies to attract, retain, and fairly distribute the highest quality teachers at each school. (SB 550, § 15.)

c. Districts Will Provide Formal Complaint Procedures on the Subjects of the Settlement.

In addition to these levels of oversight, the legislation provides for a formal complaint mechanism for parents, teachers, and students. Complaints may be filed if students do not receive sufficient instructional materials, if facilities issues rise to the level of health and safety risks, or if classes lack permanent teachers or teachers who are trained in the subject matter they are assigned to teach, including training to teach English Language Learners. (SB 550, § 12 & AB 2727, § 1) Each school must use a uniform complaint. Complainants may write as much as they would like on the complaint and then file the complaint with the principal. The principal or the designee of the district superintendent shall make all reasonable efforts to investigate any problem and remedy a valid complaint in a reasonable time not to exceed 30 working days from receipt of complaint. (SB 550, § 12.) The principal or the designee shall report the remedy to the complainants within 45 working days of the initial filing of the complaint. A complainant who is not satisfied has the right to describe the problem to the governing board of the school district at a regularly scheduled hearing. The complainant can appeal a decision that poses an emergency or urgent threat directly to the Superintendent of Public Instruction. (*Id.*)

d. Substantial Funding is Targeted for Implementing the New Programs.

In addition to these levels of oversight, the legislation provides for funding to be directed specifically to provision of instructional materials, identification and correction of facilities needs, and appropriate County Superintendent oversight of schools. (SB 550 & SB 6.)

e. The State Has Committed to Eliminate Concept 6.

The settlement legislation also provides that the Concept 6 multitrack, year-round calendar, which truncates the school year by 17 days, be eliminated by 2012. (AB 1550, § 3.) In addition, the legislation requires that districts that operate schools on the Concept 6 calendar report to the public and to the State Board of Education regarding progress toward elimination of the calendar to ensure that the districts make satisfactory progress toward the final elimination date. (*Id.*)

2. The Settlement Provides Remedies Now, Including Programs and Funding Beyond a Court's Authority to Order.

Had plaintiffs established their case at trial, a remedy would have been subject to a possible stay pending appeal. If a stay was granted, it would have taken years for the class to receive the benefits of the remedy. The settlement process has facilitated remedial action that has taken place more quickly than any court-ordered remedy. Even before final approval of the settlement, the California Legislature has passed law implementing the parties' Settlement Agreement stating,

> It is the intent of the Legislature to memorialize and to implement the State of California's settlement agreement in the case of *Williams v. California* (citations omitted) and that the provisions of law added or modified by this act be substantially preserved as a matter of state policy in settlement of this case. The state is not, however, precluded from taking additional measures in furtherance of the settlement agreement and to improve the quality of education for pupils, in ways consistent with the provisions of the settlement agreement....[I]t is the intent of the Governor and the Legislature in enacting this act to establish these minimum thresholds for teacher quality, instructional materials, and school facilities. The Legislature finds and the Governor agrees that these minimum thresholds are essential in order to ensure that all of California's public school pupils have access to the basic elements of a quality public education.

(SB 550, § 25.)

In addition, because the power of appropriation belongs exclusively to the Legislature, *see Butt*, 4 Cal. 4th at 697-98, a remedy imposed by Court order would not have guaranteed the amount of funding that is being dedicated to this settlement. In consideration of the discretion that should be accorded to the administrators responsible for carrying out a remedy, the Court likely would have ordered defendants to formulate a remedial plan. As the New Hampshire

Supreme Court recognized, "'there are many different ways the Legislature could fashion an educational system while still meeting the mandates of the Constitution.'" *Claremont Sch. Dist. v. Governor*, 794 A.2d 744, 758 (N.H. 2002) (citations omitted); *see also Rose v. Council for Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989) (directing the General Assembly to "recreate and redesign a new system that . . . will guarantee to all children the opportunity for an adequate education, through a state system"); *McDuffy v. Sec'y of Educ.*, 615 N.E.2d 516, 554-55 (Mass. 1993) ("leave it to the magistrates and Legislatures to define the precise nature of the task which they face in fulfilling their constitutional duty to educate children today, and in the future").

The Governor and the Legislature have created the settlement program in a spirit that is quite different than might have resulted if defendants had been found liable at the end of a trial. This legislation is neither confined to the parameters of a court mandate nor merely reactive. For example, in SB 550, the Legislature stated:

> [T]hese minimum thresholds in no way reflect the full extent of the Legislature's and the Governor's expectations of what California's public schools are capable of achieving. Instead, these thresholds for teacher quality, instructional materials, and school facilities are intended by the Legislature and by the Governor to be a floor, rather than a ceiling, and a beginning, not an end, to the State of California's commitment and effort to ensure that all California school pupils have access to the basic elements of a quality public education.

(SB 550, § 25.)

B. The Covenant Not To Sue Is Fair.

The covenant not to sue that is included in the settlement appropriately binds the plaintiff class not to initiate litigation against the defendants regarding the issues raised in the complaint for lengths of time that are commensurate with the contentions on behalf of the class and the specific terms of the settlement. The covenant binds the class not to bring new suits until four years after approval of the settlement against the State, the State Department of Education, the State Board of Education, or the State Superintendent of Public Instruction based on claims that were pursued in this litigation, except that a different time period applies with respect to claims regarding teachers; and certain claims about the High School Exit Exam are not subject to the covenant. (Covenant ¶ 1, attached at Londen Decl., Exh. A.) Claims based on allegations as to deficiencies in the quality of teachers (except for such claims with regard to public schools in

rural settings to which the No Child Left Behind Act accords an extended compliance deadline) lasts until September 30, 2006. Claims regarding these schools in rural settings are subject to the four-year covenant not to sue period. (Covenant ¶ 2.) In addition, the covenant explicitly does not restrict actions contesting the denial of graduation from high school based on results of the High School Exit Examination. (Covenant ¶ 4.)

The four year basic period is not much longer than, realistically, the period that could have elapsed before an effective remedy would have been in place after a trial and appeal — if a stay pending appeal were granted. Plaintiffs obtained a shorter covenant not to sue period for claims based on teacher quality because the settlement provides less extensive remedies for inequalities in teacher quality than as to instructional materials and facilities. The defendants' position on teachers was that the State's efforts on teacher quality would focus on complying with the federal No Child Left Behind Act rather than creating new remedies in the settlement for some of the same problems. Plaintiffs responded to this position by convincing the defendants to accept a covenant not to sue period reflecting the deadline for compliance with the federal law. This was an appropriate compromise.

C. The Settlement Was Reached Through an Exemplary Process.

As discussed in detail above, the parties' settlement was the product of vigorous negotiations that were mediated by Judge Patrick J. Mahoney, an experienced and dedicated Superior Court judge. Initial settlement negotiations began three years ago and intensified at several points in the litigation. In 2002 and 2003, the parties met with Judge Mahoney many times and spent significant time and effort trying to agree on mutually acceptable settlement terms.

In the discussions les by the Office of Governor Schwarzenegger, plaintiffs and defendants advanced these discussions to the point that settlement appeared possible. There were dozens of settlement meetings. Plaintiffs' counsel met with senior Administration officials (the Governor's Senior Policy Advisor, the Governor's Legal Affairs Secretary and Deputy Legal Affairs Secretary, the Governor's Deputy Legislative Affairs Secretary, the Governor's Deputy

Cabinet Secretary, the Governor's Deputy Press Secretary, the Secretary for Education and three of his senior staff), representatives of the Superintendent of Public Instruction, the State Board of Education, the Department of Education, the Department of Finance, two Deputies Attorney General, officials of the intervenor school districts (counsel from and the Executive Director of the California School Boards Association, General Counsel for San Francisco Unified School District as well as senior district employees, the Superintendent and General Counsel for Los Angeles Unified School District and senior district employees, and counsel for Long Beach Unified School District). The parties exchanged many drafts proposing and modifying settlement terms.

All of this effort focused on substance: what should and could be done to remedy the problems about which plaintiffs had complained. From the outset of the case, it was plaintiffs' ambition to invoke the State's constitutional obligation to overcome institutional obstacles that have impeded exactly this kind of joint effort to improve educational conditions for students in the worst public schools. Counsel for all parties vigorously advocated their clients' views on how to go about addressing the problems. The parties ultimately agreed to the settlement that has been enacted in state law and is now before this Court. From this history, there is no room for doubt that the settlement is the product of a process that deserves approval.

D. The Parties Conducted Discovery and Motion Practice Sufficient To Facilitate Informed and Forceful Positions on the Merits.

In addition to the arms-length negotiations to arrive at the settlement terms, this settlement also is the result of extensive discovery and motion practice by plaintiffs and defendants. As discussed above, this case involved an unparalleled amount of discovery. Using extensive document requests, interrogatories, and depositions, plaintiffs developed a thorough understanding of the factual and legal issues involved in this case. In addition, over thirty experts offered expert testimony — providing in-depth analysis of the issues and remedies sought through this case. Moreover, the parties engaged in several rounds of motion practice that brought further definition to issues in the case. Through detailed discovery, expert analysis, and motion practice

plaintiffs had considerable information with which to assess our case and the reasonableness and fairness of this settlement.

E. Experienced Counsel Favor the Settlement.

The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment evaluation by the attorneys for the parties based upon a comparison of "'the terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, courts recognize that the opinion of experienced counsel supporting the settlement is entitled to great weight. *See, e.g., In re Mfrs. Life Ins. Co. Premium Litig.*, 1998 U.S. Dist. LEXIS 23217, at *23-24 (S.D. Cal. 1998).

Here, lead counsel for plaintiffs are very experienced in class action and civil rights litigation. (Londen Decl. at ¶ 17-31.) Plaintiffs' counsel believe that the probability of the concrete benefits afforded to the class now through the new legislation outweigh the uncertain benefits of what could have been accomplished through protracted litigation and the appellate process that surely would follow. Because this Court could not appropriate money nor manage schools, a ruling would have solved the problems identified by plaintiffs only by ordering the defendants to take steps to address the problems. After protracted arms-length negotiations, plaintiffs' counsel believe that this settlement is fair, reasonable, and adequate. The parties' Settlement Judge also views the settlement very favorably. These conclusions should be afforded considerable weight by the Court.

F. Additional Litigation Would Be Complex and Expensive.

Courts also consider the complexity, expense, and likely duration of the litigation. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. Additional discovery and preparation for, and trial of, this action would be complex and expensive. As of the time the stay went into effect, trial was still weeks away. Expert discovery was on-going; motion practice was active; and the trial was sure to last many months. In the event that plaintiffs were successful at trial, defendants would appeal any unfavorable judgment, and there is no guarantee that the judgment would ultimately be sustained. In addition, if defendants did not prevail on appeal, the remedy to the

class would not be realized for many years and would result in increased litigation costs for defense of the case. *See* 4 Newberg on Class Actions § 11:50 (4th ed. 2002) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."). Accordingly, consideration of this factor also weighs in favor of settlement.

G. The Reactions of Class Members Will Also Be a Relevant Consideration.

Courts also consider the reaction of class members in reviewing the fairness of settlement. Class representatives have given the settlement their approval without reservation. (Londen Decl. at ¶ 9.) Plaintiffs will address the positions of absent class members after the period for their comments.

CONCLUSION

For all of the reasons stated above, the proposed settlement reached by the parties offers a fair, adequate, and reasonable resolution of a complex and significant case. Plaintiffs request that this Court approve this historic settlement.

Dated: December 2, 2004

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REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 22, 2005

CHARTER SCHOOL FACILITY PROGRAM JOINT REPORT

PURPOSE OF REPORT

To request adoption of the Charter School Facility Funding Joint Report to be submitted to the Legislature.

DESCRIPTION

Assembly Bill 14 (Chapter 935, Statutes of 2002, Goldberg) created a pilot program within the existing State School Facility Program (SFP) that allows the State Allocation Board (SAB) to provide funding for the new construction of charter school facilities. Within Proposition 47, approved by the voters in November 2002, $100 million was made available for the Charter School Facility Program (CSFP). Senate Bill 15 (Chapter 587, Statues of 2003, Alpert) modified the Program to address some of the concerns raised after the first round of funding. With the passage of Proposition 55, an additional $300 million was made available for the CSFP. This report has been prepared by the Office of Public School Construction (OPSC) and the California School Finance Authority (CSFA) in compliance with Education Code (EC) Section 17078.66 to assist the Legislature in determining the best possible way to deliver future facility funding to charter schools.

STAFF COMMENTS

As required by the EC, the joint report to the Legislature on Charter School Facility Funding provides an explanation of the implementation process for the changes to the Program, a description of how the second round of funding through this Program was administered, a description of projects funded by the SAB, other methods the SAB uses to fund charter schools outside of this Program, and lastly, recommendations for statutory changes. The report is separated into two parts; Part A was prepared by the OPSC and Part B was prepared by the CSFA. The joint report will be provided under separate cover.

RECOMMENDATION

Accept the Charter School Facility Funding Joint Report and authorize the Executive Officer to provide copies of the report to the Legislature.

Charter School Facility Funding

Joint Report to the Legislature

July 2005

Prepared for the Legislature by the

State Allocation Board

and the

California School Finance Authority

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Preface

Introduction

Chapter 935, Statutes of 2002, (AB 14–Goldberg) created a pilot program within the existing State School Facility Program (SFP) that allows the State Allocation Board (SAB) to provide funding for the new construction of charter school facilities. Within Proposition 47, approved by the voters in November of 2002, $100 million was made available for the Charter School Facility Program (CSFP or Program). Senate Bill 15 (Alpert) modified the CSFP to address some of the concerns raised after the first round of funding. With the passage of Proposition 55, in March 2004, an additional $300 million was made available for the CSFP. This report has been prepared by the Office of Public School Construction (OPSC), on behalf of the SAB, and the California School Finance Authority (CSFA or Authority) in compliance with Education Code (EC) Section 17078.66 to assist the Legislature in determining the best possible way to deliver future facility funding to charter schools. This report contains an explanation of the implementation process for the changes to the CSFP, a description of how the second round of funding through this Program was administered, a description of the projects funded by the SAB, other methods the SAB uses to fund charter schools outside of this Program, and lastly recommendations for statutory changes. The report has been divided into Part A, which was prepared by the OPSC, and Part B, which was prepared by CSFA.

About the SAB/OPSC

SAB

The SAB is responsible for determining the allocation of State resources (proceeds from General Obligation Bond Issues and other designated State funds) used for the new construction and modernization of public school facilities. The SAB is also charged with the responsibility for the administration of the SFP, the State Relocatable Classroom Program, and the Deferred Maintenance Program. The SAB is the policy level body for the programs administered by the OPSC.

The SAB is comprised of the Director of Finance (the traditional chair), the Director of the Department of General Services, the Superintendent of Public Instruction, three members of the Senate, three members of the Assembly, and one appointee by the Governor.

OPSC

The OPSC, as staff to the SAB, implements and administers the SFP and other programs of the SAB. The OPSC is charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of funding being requested. The OPSC also prepares recommendations for the SAB's review and approval.

It is also incumbent upon the OPSC staff to prepare regulations, policies, and procedures which carry out the mandates of the SAB, and to work with school districts to assist them throughout the application process. The OPSC is responsible for ensuring that funds are disbursed properly and in accordance with the decisions made by the SAB.

About the CSFA

The CSFA was created in 1986 (Section 17170 through 17199.5 of the EC to provide tax-exempt, low cost financing to school districts and community colleges for the use in the repair and construction of school facilities, as well as for working capital purposes. The CSFA has offices in Sacramento and Los Angeles, and is comprised of the following members: the State Treasurer (who serves as chair), the Superintendent of Public Instruction, and the Director of Finance.

Summary of Program

The CSFP allows charter schools to access new construction State facility funding directly or through the school district where the charter school is physically located. The pupils attending the charter school must be classroom-based and not independent study, internet-based, or home school. In addition, the school district where the charter school is physically located must have demonstrated to the SAB that pupils are "unhoused" and, thus, the district is eligible for new construction funding. The new construction funding to be provided consists of a 50 percent State grant amount and a 50 percent local matching share amount. The charter school has the option to meet the 50 percent local matching share requirement by entering into a lease agreement with the State for a period of up to 30 years. Prior to the SAB providing any funding for the project, the CSFA must determine whether the charter school is financially sound, or simply, if the applicant charter school has demonstrated financial and operational capability in running a charter school that will allow them to commit to and fulfill the 50 percent local matching share contribution requirement.

At the point the initial application is filed with the OPSC and CSFA, the charter school more than likely has not designed the school, selected or acquired a school site, etc. Therefore, the Program is set up to provide charter schools with a reservation of funding known as a Preliminary Apportionment, which is an estimation of the funds that will be needed to build the project. This approval allows a charter school time to receive the necessary approvals from other State entities (California Department of Education (CDE), Division of the State Architect (DSA), and Department of Toxic Substance Control (DTSC)) that are required prior to converting the project to a Final Apportionment and, ultimately, to construct the facility. The charter school will have four years to design the project, acquire a site, and convert the Preliminary Apportionment to a Final Apportionment. Advance fund releases are available to the charter school to assist with the costs associated with designing the project and acquiring a site. The Final Apportionment provided by the SAB will be based on actual eligible project costs as defined in the SFP regulations. The CSFA must determine whether the applicant is financially sound at the Preliminary Apportionment Stage, at the time of any advance releases of funds, and at the Final Apportionment Stage.

Part A: State Allocation Board and the Office of Public School Construction

SAB Members

- **Mr. Tom Campbell**, Director, Department of Finance
- **Mr. Ron Joseph**, Director, Department of General Services
- **Mr. Jack O'Connell**, State Superintendent of Public Instruction, Department of Education
- **Senator Bob Margett**
- **Senator Alan Lowenthal**
- **Senator Jack Scott**
- **Assembly Member Jackie Goldberg**
- **Assembly Member Lynn Daucher**
- **Assembly Member Joe Coto**
- **Ms. Rosario Girard**, Governor Appointee

Staff

- **Ms. Luisa M. Park**, Executive Officer, State Allocation Board/Office of Public School Construction
- **Ms. Mavonne Garrity**, Assistant Executive Officer, State Allocation Board
- **Ms. Lori Morgan**, Deputy Executive Officer, Office of Public School Construction

Section 1: Implementation of the Changes Required by Senate Bill 15 and Description of Projects Funded

SAB and OPSC Implementation Process and Changes to the Program

AB 14 established the CSFP as a pilot program. After the first round of funding was completed, the Program was evaluated for areas that needed to be modified to provide the best process for allocating the $300 million made available through the passage of Proposition 55. Suggestions for change came from several venues, including input from the charter school community, school districts, and suggestions for statutory change made in the July 23, 2003, Joint Report to the Legislature by the OPSC and CSFA. Some of the suggested statutory changes were contained in SB 15.

The implementation of SB 15 for the OPSC began in early October 2003. A major aspect of the process was the presentation of working papers and proposed regulations to the SAB Implementation Committee. The Implementation Committee is an informal advisory body established by the SAB to assist the Board and the OPSC with policy and legislation implementation (committee membership is comprised of organizations representing the school facilities community). The proposed changes to the Program were discussed at multiple public committee meetings; by January 2004, the revised Program requirements and application began to take shape. In addition to the public meetings, the OPSC had several individual meetings with CSFA and charter school advocates to address specific issues. With valuable input from committee members, charter school advocates, and other interested parties, a consensus was reached and program changes were implemented to better meet the needs of both the school district and charter school communities.

On February 25, 2004, the SAB adopted the proposed amended regulations for the Program and authorized the Executive Officer to file the regulations with the Office of Administrative Law (OAL) on an emergency basis. Upon OAL approval, the emergency regulations became effective on June 1, 2004. The application filing period began June 1, 2004, and closed July 29, 2004.

One of the main goals in modifying the Program was to try to fund the maximum number of projects with the limited funding available. With the $100 million available under Proposition 47, the SAB was only able to provide funding to six out of 17 eligible projects (35 percent). In order to maximize the number of projects funded in the second round, the CSFP regulations were revised to include limits on certain things that could be requested within a funding application. The revised regulations limited the number of pupil grants that could be requested, the amount of acreage allowed for site acquisition, and the total project construction cost as a whole. In addition, the per-pupil grant amount was made static, not to change with future construction cost index increases and no inflation factor was added to the projects. In order to cover possible expenses for hazardous material clean up, DTSC expenses, and relocation costs, separate funding pools were set aside for applicants to access if they encountered these expenses upon final conversion of the project. The pools are exclusive of the caps, but the limited amount of funding made available for the pools should encourage applicants to carefully consider sites that require extensive clean up or relocation. The funding caps resulted in the ability of the SAB to fund 28 out of 34 eligible projects (82 percent).

Another change to the Program involved modifications to the definitions of small, medium, and large charter schools. This was due to the fact that there was not enough of a distinction in these funding categories during the first round of funding. The range within each category was increased to allow for more variance.

In addition, the preference points assigned to the various percentages for free and reduced lunch and overcrowded districts were modified. With the first round of funding, there was not enough variance within these categories, resulting in applicants receiving the same number of preference points. The scales were adjusted to allow more ranges of preference points to increase the variance within the categories.

One of the most exciting changes for the CSFP applicants with the second round of funding was the ability to receive an advance release of funds to assist with the costs of designing a project and purchasing a site. Many of the charter schools did not have the ability to cover these expenses up front. The introduction of the advance fund releases should make it easier for the recipients of the Preliminary Apportionments to successfully convert their projects to Final Apportionments in a timely manner.

Statewide Outreach

After the changes to the Program were finalized and the new regulations were approved by the OAL, the focus shifted to spreading the word throughout the charter school community of the availability of Proposition 55 funds and to inform applicants of the changes to the Program.

The OPSC, CSFA, CDE, DSA, and DTSC conducted a series of Statewide workshops held in Sacramento, Fresno, Los Angeles, and San Diego, to inform both school districts and charters schools about the revised CSFP. The OPSC and CSFA also conducted another workshop in Oakland. Attendees of the workshops received information about the eligibility requirements, application, and SAB approval process as well as being introduced to the other State entities involved in school construction. Participation and attendance at all locations was good and overall the message was well received by the attendees.

OPSC and CSFA Interfaces

As with the first round, both agencies worked closely throughout this entire process to ensure that the lines of communication were kept open with the applicants and that the necessary documents from the applicants were received to allow the projects to move forward. The OPSC was responsible for determining if the school district where the charter school is or will be physically located has new construction eligibility and also for determining the preliminary apportionment amount. The CSFA was responsible for determining if the charter school is financially sound.

Application Process

Although two agencies are involved in the approval process and both have a separate application to request a preliminary apportionment, the OPSC and CSFA agreed in the first round that all applications would be submitted to one office to make it a seamless process for the applicants. As this system was effective for the first round, it was structured the same way for the second round. The OPSC reviewed applications for completeness and eligibility. The CSFA received its copy of the CSFP applications directly from OPSC and the OPSC notified CSFA of any applicants that were ineligible. The application filing period for the second round of funding concluded on July 29, 2004. The OPSC and CSFA accepted applications from 50 applicants. For a complete listing of applications, please refer to Appendix 1.

Description of Projects Funded

On February 23, 2005, the SAB provided preliminary apportionments to applicants that met the funding criteria. The total value of applications received in the second round of funding exceeded the available funds by $43,786,667. Therefore, to provide preliminary apportionments, the SAB utilized a process that categorized the applications into four different criteria to assure the funds were allocated in different areas of the State, locality (e.g. urban, rural, suburban areas of the State), different size charter schools, and charter schools that serve different grade levels. In addition to categorizing the applications, preference was given to applicants that met the criteria of being overcrowded, low-income, and non-profit as defined in regulation.

The following table provides an overview of the projects that received a preliminary apportionment (reservation of funding) from the Proposition 55 funds. All of the charter schools receiving a preliminary apportionment first were deemed to be financially sound by CSFA. Most selected the lease option to satisfy the 50 percent local share requirement. These applicants will have four years to design the project, acquire a site, receive approvals from the necessary agencies, and file a funding application with the OPSC to convert the preliminary apportionment to a final apportionment.

Charter School Facility Preliminary Apportionments

February 23, 2005 State Allocation Board Meeting

APPLICATION NO.	DISTRICT	COUNTY	CHARTER SCHOOL	TOTAL PREFERENCE POINTS	REGION	URBAN/RURAL/SUBURBAN	LARGE/MEDIUM/SMALL	GRADE LEVEL	NUMBER OF PUPIL GRANTS REQUESTED	ESTIMATED STATE SHARE (INCLUDING LEASE AND/OR CASH CONTRIBUTION)	TOTAL PROJECT COST
54/67314-00-003	Elk Grove Unified	Sacramento	California Montessori Project – Elk Grove Campus	68	1	Suburban	Medium	7–8	300	$ 11,834,282.00	$ 11,834,282.00
54/62166-00-001	Fresno Unified	Fresno	University High (New Charter School)	64	2	Urban	Large	9–12	400	10,903,850.00	11,603,850.00
54/75044-00-001	Hesperia Unified	San Bernardino	Crosswalk Charter School	88	3	Suburban	Small	9–12	385	6,556,218.00	6,556,218.00
54/75192-00-001	Temecula Valley Unified	Riverside	Temecula Preparatory School	28	4	Rural	Medium	7–8	329	2,334,590.00	4,669,180.00
54/64733-00-013	Los Angeles Unified	Los Angeles	Vaughn Elementary Language Academy	64	3	Urban	Medium	K–6	350	8,335,663.00	11,344,418.00
54/61838-00-001	Buckeye Union Elementary	El Dorado	California Montessori Project – Shingle Springs	36	1	Rural	Medium	7–8	350	5,310,746.00	5,310,746.00
54/64352-00-002	Centinela Valley Union High	Los Angeles	Environmental Charter	80	3	Suburban	Medium	9–12	405	13,914,378.00	13,914,378.00
54/64733-00-011	Los Angeles Unified	Los Angeles	Camino Nuevo Charter Academy	56	3	Urban	Large	7–8	450	10,964,168.00	10,964,168.00
54/64634-00-002	Inglewood Unified	Los Angeles	Animo Inglewood Charter High	76	3	Suburban	Medium	9–12	301	12,268,618.00	12,268,618.00
54/64733-00-014	Los Angeles Unified	Los Angeles	Vaughn High School Academy	64	3	Urban	Small	9–12	469	14,521,483.00	19,689,644.00
54/64634-00-003	Inglewood Unified	Los Angeles	Today's Fresh Start Charter	68	3	Suburban	Medium	K–6	338	12,605,650.00	12,605,650.00
54/62166-00-002	Fresno Unified	Fresno	Kipp Academy Fresno	64	2	Urban	Small	7–8	280	4,156,628.00	4,156,628.00
54/64733-00-016	Los Angeles Unified	Los Angeles	Oscar De La Hoya Animo Charter High School	62	3	Urban	Medium	9–12	321	11,816,346.00	11,816,346.00
54/67314-00-002	Elk Grove Unified	Sacramento	Elk Grove Charter	48	1	Urban	Medium	9–12	189	3,547,830.00	3,547,830.00
54/61259-11-001	Oakland Unified	Alameda	OSA – Fox Theatre Project	52	2	Urban	Medium	9–12	275	4,983,922.00	9,967,844.00
54/64733-00-010	Los Angeles Unified	Los Angeles	Leadership Academy	60	3	Urban	Medium	9–12	455	18,166,664.00	18,166,664.00
54/75192-00-002	Temecula Valley Unified	Riverside	French Valley Charter	28	4	Rural	Medium	7–8	285	2,028,869.00	4,057,738.00
54/64733-00-015	Los Angeles Unified	Los Angeles	Academia Semillas Del Pueblo	60	3	Urban	Medium	7–8	444	13,557,546.00	13,557,546.00
54/62893-00-002	Jacoby Creek Elementary	Humboldt	Jacoby Creek Elementary	20	1	Rural	Large	7–8	81	1,362,964.00	1,362,964.00
54/64733-00-018	Los Angeles Unified	Los Angeles	Animo South Los Angeles Charter High	56	3	Suburban	Small	9–12	353	12,457,476.00	12,457,476.00
54/64733-00-026	Los Angeles Unified	Los Angeles	Los Angeles 6–12 Charter	56	3	Suburban	Large	9–12	400	19,669,826.00	19,669,826.00
54/64733-00-020	Los Angeles Unified	Los Angeles	Port of Los Angeles High School	56	3	Urban	Medium	9–12	420	16,335,234.00	16,335,234.00
54/64733-00-019	Los Angeles Unified	Los Angeles	Animo Venice Charter High	56	3	Urban	Small	9–12	337	12,328,892.00	12,328,892.00
54/64733-00-012	Los Angeles Unified	Los Angeles	Accelerated Charter Elementary School	56	3	Urban	Small	K–6	350	11,756,256.00	11,756,256.00
54/64733-00-025	Los Angeles Unified	Los Angeles	Chime Charter Middle	56	3	Urban	Small	7–8	237	3,264,680.00	3,264,680.00
54/64733-00-017	Los Angeles Unified	Los Angeles	Animo Downtown Charter High	56	3	Urban	Small	9–12	258	12,142,552.00	12,142,552.00
54/75085-00-001	Rocklin Unified	Placer	Maria Montessori Charter Academy	40	1	Suburban	Small	7–8	270	5,560,948.00	5,560,948.00
54/68478-28-001	San Francisco Unified	San Francisco	City Arts and Tech High	48	2	Urban	Small	9–12	420	14,124,484.00	14,124,484.00
									NEW CONSTRUCTION FUNDING TOTALS:	$276,810,763.00	$295,035,060.00

Section 2: School Facility Program – Alternative Funding Options for Charter Schools

Funding Options for Charter Schools

The SAB may provide new construction and modernization grants, as described below, to charter schools; however, the applications would need to be submitted to the OPSC by the school district filing for the charter. Outside of the access provided through the passage of AB 14, charter schools are not able to access SFP new construction and modernization funding directly. It is only under AB 14 and the subsequent SB 15 in which a charter school can apply for new construction funding directly; no such option has been provided for modernization funding. At the conclusion of this section is a listing of known charter school projects completed under the SFP.

Summary of School Facility Program

The SFP provides funding in the form of grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The two major funding types available are "new construction" and "modernization". The new construction grant provides funding on a 50/50 State and local match basis. The modernization grant provides funding on a 60/40 basis. The process for accessing the State assistance for this funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are approved by the SAB and this approval establishes that a school district or county office of education meets the criteria under law to receive assistance for new construction or modernization. Eligibility applications do not result in State funding. In order to receive funding for an eligible project, the district must file a funding application, including DSA approved building plans, with the OPSC for approval by the SAB.

Applications for eligibility may be filed in advance of an application for funding, or the eligibility and funding requests may be filed concurrently at the preference of the district. In either case, an application for eligibility is the first step toward funding assistance through the SFP. The eligibility process is done only once. Thereafter, the district need only update the eligibility information if additional new construction and modernization funding applications are submitted.

New Construction Eligibility and Funding

Eligibility

The underlying concept behind eligibility for new construction is straightforward. A district must demonstrate that existing seating capacity is insufficient to house the pupils existing and anticipated in the district using a five-year projection of enrollment. Once the new construction eligibility is determined, a "baseline" is created that remains in place as the basis of all future applications. Districts generally establish eligibility for new construction funding on a district-wide basis. However, under certain circumstances, the district may have more eligibility if the applications are made on a High School Attendance Area (HSAA) basis using one or several attendance areas. This circumstance occurs when the building capacity in one HSAA prevents another from

receiving maximum eligibility. For example, one attendance area may have surplus classroom capacity while another does not have the needed seats to meet the current and projected student enrollment. If the district were to file on a district-wide basis, there might be little or no overall eligibility, even though the students in one attendance area are "unhoused" by the definitions established in the SFP. In this case, by filing on a HSAA, the eligibility would increase to allow construction of adequate facilities for the unhoused students.

Funding

After a district has established eligibility for a project, the district may request funding for the design and construction of the facility. In most circumstances, the funding is approved after the district has acquired or identified a site for the project and after the plans for construction are approved by the DSA and the CDE. The funding for new construction projects is provided in the form of grants. The grants are made up of a new construction grant (pupil grant) and a number of supplemental grants. A brief description follows:

New Construction Grant—intended to fund design, construction, testing, inspection, furniture and equipment, and other costs closely related to the actual construction of the school buildings. This amount is specified in law based on the grade level of the pupils served.

Supplemental Grants—additional special grants are provided to recognize unique types of projects, geographic locations, and special project needs. These grants are based on program requirements, or formulas set forth in the SFP Regulations.

Modernization Eligibility and Funding

Eligibility

Establishing eligibility for modernization in the SFP is more simplified than new construction. Applications are submitted on a site-by-site basis, rather than district-wide or HSAA, as is the case for new construction. To be eligible, a permanent building must be at least 25 years old and a relocatable building must be at least 20 years old, and within that time must not have been previously modernized with State funding. The district must also show that there are pupils assigned to the site who will use the facilities to be modernized.

It is also possible for a building to receive a second modernization apportionment. This would apply in cases where the building had previously been modernized using State funding. A permanent building is eligible for a second modernization apportionment 25 years after the date of its previous modernization apportionment. Portable buildings are eligible for a second modernization apportionment 20 years after the date of the first apportionment, provided that the modernization funds are used to replace the portable classroom.

Funding

After a district has established eligibility for a project, the district may request funding for renovation of the facility. In most circumstances, the funding is approved after the plans for construction are approved by the

DSA and the CDE. The funding for modernization projects is provided in the form of grants. The grant amount is increased and funding for specific utility upgrades is allowed if permanent buildings to be modernized are 50 years old or over. The modernization grant (pupil grant) amount is set in law and is based on the number of students housed in the over-age facilities. In addition to the basic grant amount, a district may be eligible for supplemental grants depending on the type and location of the project. The modernization grant can be used to fund a large variety of work at an eligible school site. Replacing doors, windows, flooring, lighting, air conditioning, insulation, roof replacement, as well as the purchase of new furniture and equipment are just a few of the eligible expenditures of modernization grants. A district may even use the grants to demolish and replace existing facilities of like kind. However, modernization funding may not be spent for construction of a new facility, except in very limited cases, generally related to universal design compliance issues or site development.

The following chart provides a list of charter school projects that received an apportionment for new construction or modernization funding under the SFP:

Charter School Projects Funded through the SFP

Prior to Assembly Bill 14

New Construction Projects

DISTRICT	SITE	GRADE LEVEL	STATE SHARE	TOTAL PROJECT COST
Chula Vista Elementary	Chula Vista Learning Community Charter	K–6	$ 6,482,072.00	$ 12,964,144.00
Los Angeles Unified	Accelerated Charter	K–12	12,587,830.00	25,175,660.00
Los Angeles Unified	Fenton Avenue Charter School	K–6	2,189,933.00	4,379,866.00
Natomas Unified	Natomas Charter	7–8	263,417.00	526,834.00
Natomas Unified	Natomas Charter	9–12	7,526,232.00	15,052,464.00
Vista Unified	Guajome Park Academy Charter	K–12	$ 19,473,884.00	$ 39,195,568.00

Modernization Projects

DISTRICT	SITE	GRADE LEVEL	STATE SHARE	TOTAL PROJECT COST
Los Angeles Unified	Palisades Charter High	9–12	$ 3,766,811.00	4,708,514.00
Los Angeles Unified	Palisades Charter High	9–12	3,766,811.00	4,708,514.00
Los Angeles Unified	Palisades Charter High	9–12	3,766,811.00	4,708,514.00
Ravenswood City Elementary	East Palo Alto Charter	K–6	251,493.00	314,366.00
Ravenswood City Elementary	East Palo Alto Charter	K–8	251,493.00	314,366.00
Redding Elementary	Cedar Meadows/Stellar Charter	K–6	$ 909,542.00	$ 1,136,928.00

Section 3: Recommendations for Potential Changes

Issue 1: Criteria for Funding

EC Sections 17078.56 (a) and (b) state that the Board shall make preliminary apportionments only to financially sound applicants while ensuring that there is a fair representation of the various geographic regions of the State, of urban, rural, suburban regions of the State, of large, medium, and small charter schools throughout the State, and of the various grade levels of pupils served by charter school applicants throughout the State. Within each of the above criteria, we were to give preference to charter schools in overcrowded school districts, charter schools in low-income areas, and charter schools operated by not-for-profit entities.

In the first round of funding, the OPSC used the above criteria to develop preference points for each application and to place each of these applications in one of the above categories. This method was repeated for the second funding round. Once preference points were calculated for each, the applications were looked at to ensure that the various regions of the State were covered before we moved on to funding applications in the next category of urban, rural or suburban regions of the State and so on. The recommendations presented to the SAB for preliminary apportionments within each category were based on the order the categories appeared in law. This issue was addressed by the OPSC in the previous Joint Report to the Legislature and no statutory changes were implemented. However, with the second round of funding, it became evident that some members of the Legislature felt that the law behind this method of establishing the criteria for funding may need to be revisited.

Recommendation

The Legislature should review the EC to ensure that the current funding criteria and categories receiving preference are the most appropriate and are in the desired order of importance. If the Legislature envisioned another method for ranking and providing preliminary apportionments, other than those set out by the OPSC, clarifying language should be added to the EC.

Issue 2: Enrollment Updates

Currently school districts through the regular SFP are required to update their enrollment prior to the submittal of their next new construction funding application. The reason for the requirement is because the enrollment has a direct effect on the available new construction eligibility. Each charter school application for preliminary apportionment is considered a funding application and for those districts that have applied on behalf of charter schools, the school districts have updated their enrollment because they have this information available. However, for those charter schools that applied on their own behalf, there was difficulty acquiring the updated enrollment numbers from the school districts. This information is not readily available to the charters and the charter schools are not permitted to submit updated enrollment numbers on behalf of the district. There is little incentive for districts to submit this information. Gathering the information can be time consuming and some districts are reluctant to provide the information for purposes of the CSFP, as doing so possibly enables a charter school project to utilize eligibility that may be necessary to construct other district projects. As obtaining the updates from school districts also resulted in delays during the second round of funding, the OPSC suggests that the Legislature again consider recommendations to resolve this issue.

Recommendation

Require school districts to submit updated enrollment to OPSC within 30 days of OPSC notification that a charter school application has been accepted for processing by the OPSC regardless of the entity that filed the application.

Issue 3: Notification of Application to the School District

EC Section 17078.53(c)(2) states that applications may be submitted by a charter school on its own behalf "if the charter school has notified both the superintendent and the governing board of the school district in which it is physically located of its intent to do so in writing at least 30 days prior to submission of the preliminary application." During the second round of funding several applications were rejected because the charter school had not complied with this requirement. Charter schools, school districts, and SAB members expressed concern that the intent of the law was to give school districts sufficient notice that an application was to be filed. However, there was some discussion that verbal conversations with the school district may also serve the same purpose in providing notification to the district.

Arguments were made requesting that the SAB allow an application to go forward without the 30-day written notification if the school district would confirm that they had received adequate notice through another means; or if the school district had not received notice but was supportive of the application. This would provide charter schools with an option to inform districts. This flexibility would avoid unnecessarily penalizing an applicant who failed to send written notification, but has the support of the school district in regards to filing the application. The EC and regulations could be broadened to specify that eligible applicants must have provided adequate notice to the school district. Adequate notice may be defined as either proof of written notification to the superintendent and governing board 30 days prior to the application submittal or a letter of support for the application signed by the district superintendent which acknowledges that the district is supportive of the application (regardless of when or how they learned about it).

Recommendation

If the Legislature agrees that this notification requirement should be broadened, clarifying language should be added to the EC.

Section 4: Issues Raised by Applicants and Other Public Comments

In order to make certain that all issues of concern were addressed, the OPSC and the CSFA asked representatives from the various charter school organizations and from some applicants themselves what changes they felt were necessary to improve the CSFP application process. Few responses were received, but below are the comments that were made:

Issue 1: Corrections to Applications

The OPSC should be more flexible and make minor corrections to applications rather than having the charter school fix it and send in a new application form.

Recommendation

No change. While the OPSC recognizes that making minor corrections to application documents can be time consuming and burdensome for applicants, we feel that it is inappropriate for the OPSC staff to make any changes to an application once received by our office. Even something as simple as rounding numbers can have an impact on the amount of funding a project receives. The OPSC feels that all necessary changes to the documents should be made by the applicant with a new signature on the forms indicating that the change has been approved by the authorized charter school representative.

Issue 2: Total Project Cost

The OPSC should present total project cost figures to charter schools as early in the process as possible.

Recommendation

In the future, the OPSC will more clearly provide the total project cost figure to applicants during the application processing time period to make certain that the resulting project cost matches the amount of funding that the applicant intended to apply for.

Issue 3: Definition of General Location for Median Cost Determination

Current CSFP definitions identify the Charter School General Location as "a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement." During the second round of funding many applicants felt that it was too difficult to obtain a three mile radius or felt that three miles did not truly reflect the area in which they intended to build. Most applicants expressed a preference for a one mile radius.

Recommendation

Amend the definition of the Charter School General Location to a minimum of one mile radius to a maximum of three mile radius.

Issue 4: **Free and Reduced Lunch Methodology Clarification**

The method for determining the percentage of students receiving free and reduced lunch at a particular charter school and/or school district used during both rounds of CSFP funding used the most recent numbers on file with the CDE. The numbers on file with CDE are based on information collected during the month of October. Applicants were concerned that the percentage of free/reduced lunch changes over the school year.

Recommendation

Amend the CSFP regulations to describe the timeframe in which the information is collected and put on file with the CDE. While we feel the current method is the most equitable and accurate and do not recommend changes to the process, it would be advisable to clarify the process for the applicants so that they do not feel it is an arbitrary number.

Issue 5: **Urban, Rural, and Suburban Classifications**

During the second round of funding some applicants disagreed with their designation of being located in a rural, suburban, or urban area. When first implementing the CSFP, the OPSC searched for an equitable and unbiased methodology to use when assigning the locality types. The methodology selected was the use of federally derived locale codes.

The Locale codes, also known as the Johnson codes, were developed in the early 1980s by the U.S. Bureau of the Census. This coding system is based on both the proximity to metropolitan areas and on population size and density. These codes are assigned based on the addresses of the individual schools and are assigned at the school level. Thus, it is possible to identify areas within school districts as being different types of localities. A locale code of 1 identified the project as being in an urban area. Locale codes 2, 3, 4, or 5 identified a project as being in a suburban area and locale codes of 6, 7, or 8 identified a project as being in a rural area.

The locale codes assigned to each category were decided upon through the SAB Implementation Committee process, with input from charter school advocates and were approved by the SAB as part of the CSFP regulations in January 2003. The SAB Implementation Committee is an informal advisory body established by the SAB to assist the SAB and the OPSC with policy and legislation implementation.

For the CSFP, applicants were asked to identify the school site closest to the location of their proposed project and report the locale code for that site on the Application for Preliminary Apportionment (Form SAB 50-09).

Recommendation

No change. However, prior to the next round of funding for the CSFP, the OPSC proposes taking the issue of defining urban, suburban, and rural areas back through the implementation committee process for further public discussion and possible change to the methodology. Should it be decided at the implementation committee that a change is necessary, the regulations for the CSFP will need to be adjusted accordingly.

Issue 6: Calculations to Determine Project Costs

One applicant felt that the total project cost generated by the requested number of pupil grants and supplemental grants was too high by 20–40 percent. Asking for fewer dollars can sometimes lead to asking to build fewer classrooms and house fewer students.

Recommendation

As the majority of applicants felt that the grant amounts were too low, it is recommended to wait and see how many projects convert successfully before altering the method of calculating project costs. In addition, this calculation in the Program is another area that was discussed through the implementation committee and agreed upon by districts, charter schools, and charter school advocates alike.

Issue 7: Changes to the Funding Matrix

An applicant suggested that the Legislature look at the criteria used in allocating funding to address what may be shortfalls in the current process. The applicant felt that more emphasis should be placed on funding schools that served underprivileged children (this is captured partially through preference points). The applicant also felt that the process of funding the various categories was arbitrary. The applicant proposed the following changes to resolve these issues:

{For clarity, the funding categories are: 1 – Region; 2 – Locality (urban, rural, suburban); 3 – Size of School (large, medium, small); and 4 – Grade Level.}

1. Allocate all funds based on preference points alone.
2. Allocate all funds based on preference points alone. Give the SAB the option to make adjustments to the list if a Region is left out entirely.
3. Allocate funds to the highest preference point scoring school in each Region and, thereafter, use only preference points for the rest of the funding. Categories 2, 3 and 4 would not be used.
4. Use percentages rather than absolutes. Fund an equal percentage of applications in each group in Categories 1 and 2. Remove Categories 3 and 4 from the allocation criteria.
5. Allocate the first two-thirds of the funds based on preference points alone. Then allocate funds to any Regional Group (1, 2, 3, or 4) or Urban/Suburban/Rural Group that may have been left out. Resume allocating funds based on preference points if funds remain.
6. Keep the current method, but insert the following rule: No school that has 85 percent or fewer of the preference points of another school may be funded until the higher scoring school is funded.

Recommendation

No changes. If the Legislature envisioned a different method for allocating funds, the above suggestions might be considered when making changes to the EC regarding the order in which funds are to be allocated.

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Part B: California School Finance Authority

CSFA Members

- **Mr. Phil Angelides**, State Treasurer
- **Mr. Tom Campbell**, Director, Department of Finance
- **Mr. Jack O'Connell**, State Superintendent of Public Instruction, Department of Education

Staff

- **Ms. Katrina Johantgen**, Executive Director, California School Finance Authority

Section 1: Implementation of the Program

The following sections are presented to the Legislature pursuant to Section 17078.66(a) of the EC. Part B of this report has been prepared by CSFA staff, and approved by Authority members on June 22, 2005, for submission to the Legislature by the July 1, 2005 submission date.

Senate Bill 15

In 2003, the SAB made preliminary apportionments of funding to six charter schools totaling approximately $100 million. The awards for new facilities ranged in size from $2.6 million allocated to a high school serving 56 students to $28 million allocated to a high school expected to serve 1,156 students. Following this funding round, there was broad concern in the charter school community about the limited number of projects funded through the Program.

In response to this issue, Senate Bill 15 (Alpert, Chapter 587) was passed which, among other things, set out to maximize the number of projects funded in subsequent rounds of Program funding. This bill states that "the board, in conjunction with the California School Finance Authority, shall maximize the number of projects that may be approved by adopting total per project funding caps" and requires that the board "adopt other funding limits including, but not limited to, limits on the amount of acreage and construction funding for each project." In order to implement these changes to the Program, SB 15 "permit[s] the board to adopt, amend, or repeal rules and regulations pursuant to this chapter as emergency regulations."

Pursuant to SB 15, the board concurred with the funding cap proposal developed by OPSC at the Authority's February 24, 2004 meeting (see Part A, Section 1). SB 15 also included amendments to the Program which necessitated changes to the Authority's Program regulations.

Rulemaking Process to Implement Changes to the Program

Pursuant to the passage of SB 15, CSFA staff and counsel developed revised Program regulations which integrated the changes prescribed by the bill. Additional changes were recommended that clarify and refine the Authority's existing regulations. These changes to the Program regulations will:

1. Permit charter school management to receive credit for experience gained at other charter schools in California towards satisfying the Program's two academic year requirement.
2. Consider school districts or county offices of education applying on behalf of a charter school to have satisfied the Program's two academic year requirement.
3. Specify the financial and operational information to be provided to the Authority on a regular basis by schools having been awarded a preliminary apportionment, including such information relevant to the financial stability of any guarantor.
4. Require the Authority's review of the financially sound status of any school applying for an Advance Apportionment of funds.

Consistent with the requirements of EC, Section 17078.57, CSFA promulgated emergency regulations that were approved by OAL on March 29, 2004. The permanent regulations were approved in October 2004, and can be found in Title 4, Division 15, Article 1, commencing with Section 10151.

Additional Procedural Changes to the Application and Review Process

With the experience and insight gained from the first funding round of the Program, CSFA staff set out to refine the application and financial soundness determination process for applicants. The procedural changes described below were implemented to assist applicants.

1. **Increased Statewide Outreach and Technical Support**: CSFA and OPSC worked diligently to develop statewide workshops presenting interested charter schools with Program guidance, eligibility criteria and selection parameters to better prepare the schools to submit thorough and complete applications. For charter schools that were unable to attend the workshops, both agencies provided access to all Program-related materials via their respective websites. CSFA and OPSC staff remained available to answer questions and provide technical assistance to applicants throughout the application and funding determination processes.

2. **Financial and Operational Information Standardized**: During the first funding round, applicants sent numerous financial documents to staff for evaluation and input into a financial model. This method of processing operating and financial information proved to be extremely time consuming due to the high level of correspondence between staff and applicants necessary to ensure the accuracy of the submissions. For the Proposition 55 funding round, staff developed a four-page Microsoft Excel workbook into which applicants were required to input student performance data as well as historic and projected enrollment figures and financial information. This workbook was accompanied by detailed written instructions, and staff remained accessible to applicants throughout the process.

3. **Applicants Permitted to Review Staff Reports In Advance of Board Action**: Prior to submission to the board for consideration, each applicant was provided with a draft of the staff report containing detailed information about the school's operational and financial indicators, and staff's recommendation regarding the school's financial soundness.

OPSC and CSFA Interfaces

Pursuant to the Assembly Bill 14, CSFA and SAB (staffed by OPSC personnel) jointly administer the Program. Building on the relationship developed during the creation of the Program and the first funding round, CSFA and OPSC staff are able to rely on their counterparts to quickly and effectively address any questions or requests for information to ensure the Program's continued success.

To highlight, OPSC is primarily responsible for determining the CSFP eligibility of the applicant based on the availability of new construction grants in the relevant school district. OPSC categorizes applicants using the following prioritized criteria: (1) geographical location within the State; (2) location within areas considered urban, suburban, or rural; (3) size of charter school (small, medium or large); and (4) grade levels of pupils served. Within each category, OPSC assigns preference points to charter schools in overcrowded school districts, to charter schools in low-income areas and to charters operated by not-for-profit entities. The preference points are used to rank applicants when Program funds are over-subscribed.

CSFA's primary responsibilities include: (1) making a "financially sound" determination for all applicants at the time of Preliminary, Advance and Final Apportionment; (2) conducting ongoing monitoring and due diligence of

each approved applicant's financial soundness; (3) carrying out due diligence on guarantors; and (4) developing a guaranty and lease agreement. Pursuant to Program regulations Section 10156, CSFA relies on OPSC's determinations regarding each applicant's project eligibility and cost.

Description of the Financially Sound Determination Process

Applications for the 2004 funding round were due by July 29, 2004. In order to streamline the application delivery process, applicants were required to complete and deliver the CSFA application (Form CSFA 03 –01), along with the SAB application (Form SAB 05-09), to the OPSC.

OPSC and CSFA received applications for 50 charter school projects totaling over $570 million, which exceeded the $300 million in available Proposition 55 funds. The applicant schools ranged from a small independent stand-alone charter school, to a district-run, operated and funded charter, to a large, national educational management organization applying for funding at four separate campuses. Appendix One contains a complete list of the applicants.

Financially Sound Determination

Program regulations direct the Authority to consider certain factors when determining the financial soundness of applicants to the Program. To this end, the 12-page CSFA application requested information about each charter school's chartering authority, organizational structure, management experience, business plan, curriculum, student performance, historical and projected financial performance, material contracts, anticipated capital project, legal history, and guarantor information (if applicable).

CSFA's Program regulations include a threshold requirement that the charter school and/or the relevant organization has provided instructional operations at a California charter school for at least two academic years in order to be considered financially sound. This requirement is designed to ensure that an applicant's 24-months of operating as a financially capable concern included the actual operation of a charter school.

Pursuant to statute and Program regulations, the information received from applicants was evaluated in as comprehensive and uniform a manner as possible. CSFA developed a set of "financial indicators" and "operational indicators," as summarized below, which were utilized to evaluate the factors specified in statute and regulations.

CSFA also reviewed additional information obtained from applicants, including curriculum, project descriptions, business plans, staffing plans, material contracts and other matters relevant to the Program.

Assessment of Financial Soundness

Every Program applicant underwent a rigorous evaluation of its willingness and ability to provide for 50 percent of project costs through the required Local Matching Share, a commitment which can take the form of either a lump sum payment at the time of Final Apportionment or payments due on a lease obligation (net of any lump sum payment) for a term of up to 30 years. For the 2004 funding round, approximately 5 out of 40 (eligible)

applicants proposed to provide all or a portion of their Local Matching Share through the lump sum payment option. All lease obligations will be assigned an interest rate equal to the rate paid on funds invested in the State's Pooled Money Investment Account (PMIA) at the time of each approved applicant's Advance and/or Final Apportionment, regardless of actual lease term. Using the approximate ten-year average interest rate of the PMIA, staff incorporated an assumed PMIA rate of 4.50 percent into each applicant's assessment of financial soundness. Although the average interest rate paid on PMIA funds in October 2004 (the time of our analysis) was 1.89 percent, staff considers the assumed lease rate to be reasonable given the uncertainty relating to the actual PMIA rate in effect at Advance and/or Final Apportionment. The dates of these apportionments will be different for each approved applicant and may be up to four years from the Preliminary Apportionments made in February 2005.

Staff's assessment of an applicant's financial soundness involved the extensive analysis of numerous pieces of information relating to the charter school. To assess the financial soundness of an applicant, Section 10156 of Program regulations stipulate that CSFA make its determination through consideration of a dozen key indicators. These indicators are:

1. The applicant's expected ability to maintain stable financial operations and make estimated lease payments, if applicable;
2. Any material risks that would threaten the financial or operational viability of the applicant or the charter school;
3. Current and historical financial performance, including cash flow, major revenues, degree of reliance on grants and fundraising, enrollment trends, projected average daily attendance, expenses and debt service coverage of not less than 1.0x;
4. Reasonableness of projected financial performance based on current and historical performance and the charter school's business and/or strategic plans;
5. Whether the financial condition of the school is consistent with its planned contributions to the project;
6. Adequacy of the qualifications and performance of management and personnel to perform necessary administrative, curricular, financial and human resource functions;
7. Evidence that the applicant is meeting the terms of its charter and is not in imminent danger of having its charter revoked by the chartering authority;
8. Evidence that the chartering authority performs its required oversight responsibilities, including review of student and school performance data;
9. Adequacy of material contracts and ability of the charter school to manage such contracts and meet its obligations under such contracts. (Where the charter school has contracted with an education management organization, the authority will perform an analysis of the current and historical financial and operational condition of the organization, in addition to the above.);
10. Results of a required site visit;
11. Impact of any lump sum payment the charter school has indicated it intends to make; and
12. Where a charter school is using a guarantor, the financial resources, stability, and authority of the guarantor, and the extent to which the applicant is reliant on the guarantor to meet minimal debt service coverage ratios.

Content Areas Evaluated for Each Program Applicant

CSFA prepares a staff report for each Program applicant for Board consideration unless the application was revoked or withdrawn from the Program. Below we have highlighted the key content areas of the staff reports presented to Authority members to assist with their determination of each applicant's financial soundness.

1. **Project Description:** Staff evaluated project details having an impact on CSFA's determination of financial soundness, including (1) classification of the project as new construction or as a renovation/expansion of an existing structure; (2) the expected address of the facility, specifying if the facility will be located within the boundaries of the chartering authority; (3) the projected cost and funding sources for the project, including the selected funding option for the Local Matching Share and the financial commitments of any guarantor; (4) the requested date for the first draw on Program funds; and, (5) the estimated enrollment served when the facility will be occupied.

2. **Organizational Information**: Staff inquired about (1) the school's legal structure as a 501(c)(3) organization, a subsidiary of an Educational Management Organization (EMO) or other; (2) the charter award date, first year of instructional operations, charter expiry date and expected renewal process; and (3) the school's relationship with its chartering authority. If the school is operated by an EMO, then staff reviewed the EMO's responsibilities to the school, its history of operations, strategic plan, historical and projected financial information and biographical information of key staff and directors. Staff reviewed copies of all agreements and written reports between the chartering authority and the applicant to confirm that the chartering authority monitors the charter school's student performance data and curriculum. If the school is not chartered by the local school district, then staff inquired about the school's relationship with the district and the reasons for an outside chartering authority. For the most part, strong charter schools have authorizers who provide recommendations for improvement and act as a partner to the school. Active oversight can help fix minor problems at schools before they become difficult situations possibly impacting financial performance or leading to school closures.

   Staff evaluated each applicant's business plan by focusing on the school's competitive advantages to educational alternatives, its targeted student population, methods of student recruitment and retention as well as the details of any waiting lists. Enrollment history and average daily attendance (ADA) rates are carefully evaluated, as these can be indicators of the academic success and community approval of the school. Specifically, comparatively low (below 90 percent) or declining ADA rates are flagged by staff as an area of concern since per pupil revenues from the State are directly tied to attendance. And, because most schools assume the ongoing cost of their project will be partially covered by the additional revenues generated from new grade levels served, projected enrollment growth and ADA rates are measured against historical levels as a reality check on the affordability of the project.

   Staff also reviewed material contracts (when the obligation exceeded five percent of annual gross revenues) between the applicant and outside parties to determine if these commitments could adversely impact the school's financial obligations under the Program.

3. **Management Experience**: When the Program was created, a financially sound determination required that the applicant charter school or organization have at least two academic years of instructional operations. Recognizing that a large and growing body of qualified individuals and organizations have charter school expertise and the desire to open up new charter schools, SB 15 changed the Program's eligibility requirement to consider applications from new charter schools if key personnel (e.g., Chief Executive Officer, President, Operations Manager, Chief Financial Officer, Principal, etc.) had at least two academic years of experience in management positions at other charter schools in California. This change to Program eligibility created a new area of analysis for staff which proved challenging at times, given the subjective nature of interpreting terms like "managed by" and "key personnel". See recommendation in Section 3 regarding this area of evaluation.

4. **Student Performance**: Due to its implications for student enrollment, stability and growth, staff views student performance as a leading indicator of a charter school's financial position. Chartering authorities highly value student performance such that improvements in student performance indicators are usually specified in charter agreements. Schools with improving student performance trends, especially if those trends exceed threshold goals set by the school and the CDE, are viewed favorably. In order to measure student performance, staff utilized Academic Performance Index (API) and/or Adequate Yearly Progress (AYP) trend data generated by the CDE. The API data reported in the CDE's annual base and growth reports also are used as indicators for measuring AYP under the federal No Child Left Behind Act of 2001.

5. **Financial Analysis**: Staff evaluates all the financial factors specified in Program statute and regulations. Extensive financial data is analyzed to determine the applicant's expected ability to fund its Local Matching Share, which in most cases is the projected annual lease obligation. While other financial indicators relating to the diversity of revenues and the liquidity of funds are evaluated, the determination of financial soundness rests primarily on the school's ability to afford its lease payments at the time of occupancy of the project. Since most schools are expected to occupy their Program-funded projects no sooner than three years hence, CSFA's assessment of projected financial and operational performance is based on the accuracy of the projections provided by the applicant.

   Debt service coverage on lease payments is computed beginning with the first year of project occupancy. Net Revenues available for this purpose are calculated from the annual Change in Net Assets by adding back the projected annual lease payment, capital outlays and non-operating uses of funds and by deducting other non-operating sources of funds with the exception of contributions. A key factor in determining whether an applicant is financially sound is the applicant's expected ability to pay annual lease payments from Net Revenues, which is equivalent to a minimum debt service coverage ratio of at least 1.0x. Staff considers the use of reserves to make annual lease payments in the first year or two of occupancy may be considered acceptable if projected liquid assets are sizeable, although staff recognizes that the applicant has not pledged to reserve these assets as additional security. However, an applicant with a projected debt service coverage ratio of less than 1.0x requiring the use of available reserves to cover this shortfall for an indefinite period of time is likely to be deemed financially unsound.

   While an applicant with a projected debt service coverage ratio of greater than 1.0x may be deemed more financially viable, staff appreciates that this status could change if enrollment projections do not meet expectations or if expenses are not managed as anticipated during periods of growth. With this in mind, the projected debt service coverage ratio in the year of occupancy is stress tested to quantify lower than expected enrollment growth resulting in debt service coverage of exactly 1.0x. An applicant's ability to withstand a 50 percent cut in expected enrollment growth, and still maintain 1.0x coverage would be considered a credit strength versus an applicant that could only endure a five or ten percent reduction in student enrollment.

   Staff utilized additional financial indicators to produce comparisons among applicants and to credit norms. These indicators are the applicant's lease burden (lease payment as a percent of current year revenues) and the per student cost of facilities (lease payment divided by enrollment). Generally speaking, while an applicant may project a debt service coverage ratio in excess of 1.0x, high lease burdens or excessive per student facility costs may indicate an inability to afford other necessary, yet unanticipated, expenses.

6. **Strengths, Weaknesses and Mitigants**: This section of the staff report reiterates the applicant's key operating, management, academic performance, and financial factors that are most relevant to staff's recommendation of financial soundness. Additionally, staff presents any mitigating factors, if applicable, in this context.

Financially Sound Determinations for the Proposition 55 Funding Round

Of the 50 Program applications received, the Authority found 34 applicants to be financially sound for purposes of the CSFP Preliminary Apportionment. A listing of the Authority's preliminary financially sound determinations is contained in Appendix Two. Appendix Four contains information excerpted from the staff reports presented to Authority members to assist with their determination of each applicant's financial soundness.

Monitoring Financially Sound Determinations

It is important to note that CSFA's financially sound determinations are made with reliance on the best available information, including financial projections provided by the applicants that are subject to change. Thus, any financially sound determination is inherently conditioned upon the applicant's ability to achieve actual financial results which are no worse than the projected financial data provided by the applicant.

The Authority requires that all financially sound applicants receiving a Preliminary Apportionment provide regular updates to the Authority regarding key aspects of their financial condition and operating results, as well as revisions to projected performance. Additionally, with the passage of SB 15, CSFA is compelled to report on a school's financial soundness when an Advance Apportionment is requested. The board requires delivery of updated information not limited to semi-annual financial reports, audited financial statements, adopted budgets and all interim budget reports filed with the chartering authority. CSFA also requires receipt of notice of any material change to enrollment, student performance, charter status or financial condition within 45 days of such material change. These conditions and requirements are incorporated by reference as part of board action taken on each applicant's financially sound determination.

Should the financial condition of a school approved for Preliminary Apportionment subsequently weaken, there is an increased risk that the school would not be determined financially sound at the time of Final Apportionment. Therefore, it is vital that CSFA, on behalf of the state, be in a position to monitor changes to these results as they occur, and not only at the time of Final Apportionment. For a publicly funded program such as CSFP, where demand far outstrips available funding, there is a public interest in promptly identifying such situations to ensure available funds are put to the best use. The Authority retains the authority to withdraw its financially sound determination for any school prior to Final Apportionment due to intervening circumstances, pursuant to the actions at the December 22, 2004 and January 20, 2005 meetings. The Authority would change a financially sound determination only after the school has been afforded the opportunity to present its position to the board.

Section 2: Recommendations for Statutory Changes

Issue 1: Conformity of CSFP Statute and CSFA Statute

Section 17199.4 of the EC currently provides that school districts or county offices of education that issue debt through the Authority can elect to intercept their debt service payments at the state level through notice to the State Controller's office. In turn, the Controller makes apportionments to the bond trustee in the amount of the debt service payments from moneys in Section A of the State School Fund. The use of the intercept mechanism described herein assures that debt service payments are made in a timely manner, which results in lower interest costs to the borrower.

Sections 17078.52 through 17078.66 of the EC establish the CSFP. Among these provisions, Section 17078.57(a)(1) sets out that the Authority shall establish a process for determining how charter schools will repay the lease payments due under the Program. Section 17078.57(a)(1)(A) establishes that Section 17199.4 (the intercept mechanism) may be used by charters to repay their obligations through the Program. However, a disconnect between these two statutory provisions has been created because Section 17199.4 only permits use of the intercept mechanism by school districts or county offices of education, not charter schools.

Recommendation

The Authority is recommending that appropriate language be added to Sections 17170-17199.5 of the EC to remedy the inability of charter schools to access the intercept mechanism through the Program and to allow charter schools to issue debt for capital projects or working capital through the Authority. Staff has highlighted below the most substantive change we are seeking to the Authority's Statute. Other technical, "clean up" and conforming changes are being proposed as well.

1. Section 17173(g) of the EC would be amended to include the term "charter school" as a participating district. Subsequent to our change being implemented, Section 17173(g) of the EC will read:

   "Participating district" means a school district, *charter school* or community college district which undertakes, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to this chapter.

   "Participating district" shall also be deemed to refer to the agent to the extent the agent is acting on behalf of the school district, *charter school* or community college district for any purpose of this chapter.

2. With the addition of the term "charter school" to our statute, several conforming changes and additions are necessitated to ensure that charter schools can access all the financing tools now afforded to traditional public schools and community colleges.

Issue 2: Advance Apportionments for Proposition 47 Awardees

In addition to maximizing the number of projects that receive funding through the Program, SB 15 also instituted the Advance Apportionment mechanism (Section 17078.53(g) of the EC, which allows charter schools to access a portion of their funding for upfront costs related to planning and site acquisition prior to Final Apportionment (assuming the school has maintained its financial soundness status). Given that SB 15 was passed after the Proposition 47 apportionments, the subsequent changes to the Program do not retroactively apply to the first funding round. However, the Proposition 47 awardees have conveyed to Authority staff that they are facing significant challenges in funding the critical upfront costs of constructing their facilities.

Recommendation

The Authority is recommending that the six charter schools awarded funding through Proposition 47 be able to request an Advance Apportionment to fund the planning and site acquisition costs necessary to commence work on their projects. Accordingly, the Authority proposes that a sentence be added to Section 17078.53(g) which states, "This provision shall apply retroactively to those charter schools approved for funding from the 2002 Charter School Facilities Account. The board shall carry out this provision, and all applicable statutory, regulatory and procedural requirements shall apply when requesting an advance apportionment."

Issue 3: Requirement that a Grant Agreement be Executed at the Time of Advance Apportionment

Certain costs associated with the development and construction of a charter school facility through this Program are deemed upfront costs, therefore funds are made available to awardees shortly after Preliminary Apportionment through the Advance Apportionment process. Most of these upfront costs are categorized under the 50 percent grant portion of the Program, not the 50 percent Local Matching Share portion. Section 17078.57(a)(1) of the EC and Section 10160 of Program regulations describe the use of a lease agreement to satisfy the Local Matching Share obligation. The law, however, does not require any such agreement between the charter schools (grant recipients) and the State at the time of Advance Apportionment.

Recommendation

The Authority is recommending that a new provision be added to EC Sections 17078.52–17078.66, or that the SAB adopt a regulatory or procedural mechanism, that compels grant recipients to enter into a binding covenant which clearly delineates the terms and conditions of receiving public funds (grants) through this Program. The Authority recognizes that the SAB forms do require that grant recipients certify that the project is in compliance with public school construction law. However, Authority members are of the opinion that self-certifications may not go far enough to ensure that these public funds are being used for the purposes prescribed by the Program, that parties are aware of and adhering to all applicable laws and guidelines, and that sufficient oversight is present.

Recommendations for Regulatory Changes

Issue 1: Compliance with Charter Agreement and Good Standing with Chartering Authority

Pursuant to Section 10154 of Program regulations regarding financially sound determinations, the Authority is to evaluate, among other key factors, whether an applicant is in compliance with the terms of its charter agreement and that the charter school is in good standing with its chartering authority. The Authority seeks written verification from an applicant's chartering authority indicating that the applicant is viewed favorably.

During the last funding round, one chartering authority responded that the applicant was failing to meet the terms of its charter agreement and, consequently, was not in good standing with the authority. CSFA noted this as an area of concern given that the chartering authority has the ability to revoke a charter for the school's failure to comply with the terms of the charter agreement. In the case of this particular applicant, our inquiry prompted the school and the chartering authority to enter into a remediation plan to resolve and improve the areas where,

in the chartering authority's view, the school was failing to meet the terms of its charter agreement. It was not necessary for the Authority to take formal action regarding the school's failure to comply with the terms of its charter agreement since OPSC later determined that the applicant did not have sufficient new construction eligibility to participate in the Program.

Recommendation

The Authority is recommending that applicants (1) be in compliance with the terms of its charter agreement and (2) in good standing with its chartering authority at the time applications are submitted to OPSC and CSFA, and that this is confirmed by a new form to be completed by the chartering authority and submitted with the charter school's application.

Staff believes it unsound policy to allow applicants to resolve problems with chartering authorities after applications have been submitted. Applicants should be in compliance with the terms of their charter agreement and in good standing with their chartering authority on an ongoing basis to ensure that projects funded through the Program are eligible for construction and occupation by the school. Any applicant denied access to the Program as a result of a negative indication from a chartering authority would be provided an opportunity to appeal the Authority's decision.

Recommendations For Procedural Changes

Issue 1: **Authorizing Staff to Institute a Process to Deem Applicants Ineligible for Review Due to the Failure to Submit Information in a Timely Manner**

Section 10153 of the Program regulations state that as a condition of voluntarily applying for a Preliminary Apportionment, the applicant will concurrently provide all information required by the Authority as described in Section 10155. The regulations also state that if the information is insufficient to allow the Authority to determine whether a charter school is financially sound, the Authority reserves the right to request such additional information as will be necessary to make the determination.

Some of the Authority's requests for additional information were not responded to in a timely manner, which delayed staff's recommendations to the board regarding financial soundness. Our experience during the last two funding rounds with certain applicants has prompted CSFA to seek the authority for staff to deem applicants ineligible at the time the school has failed to comply with our timing requirement rather than wait for board approval to determine the school financially unsound for purposes of the Program.

Recommendation

In the interests of applying the Program requirements equally to all applicants, the Authority conducts all evaluations based on the information submitted concurrently with the applications. However, the Authority will continue to reserve the right to request additional clarifying information that may be necessary for the application to receive an initial determination regarding financial soundness.

The Authority is recommending that a procedural change be instituted allowing staff to provide written notification to applicants regarding insufficient information. This notification would state a date certain for submission of the necessary information. The applicant's failure to submit such information would result in staff providing a second and final notice. Failure to respond by the deadline stated in the second notice would result in the Authority deeming the applicant ineligible for Program participation and then notifying the SAB.

Issue 2: Authorizing Staff to Deem Applicants Ineligible for Program Participation Based on Review of Baseline Program Requirements

There are several baseline Program eligibility thresholds that can be evaluated at the staff level early in the application review process. These items would include but not be limited to the applicant's (1) failure to meet the requirement of providing instructional operations at a California charter school for at least two academic years; (2) inability to demonstrate that management has operated a charter school for at least two academic year; (3) non-compliance with the terms of its charter agreement or poor standing with its chartering authority; and, (4) ineligibility for new construction as determined by OPSC.

During the last two funding rounds, staff prepared comprehensive staff reports on each applicant regardless of whether or not the school met all Program eligibility criteria. In order to create greater efficiencies in the Program, staff and board members should limit their application review to only those schools that have met the baseline Program eligibility requirements.

Recommendation

The Authority will adopt a process allowing staff to notify applicants of Program ineligibility prior to staff's development of a detailed staff report for board consideration. The Authority would grant these notified applicants 10 business days to request an appeal before the board. If the Authority grants the appeal, then staff would prepare a detailed report for board consideration.

Appendices

- **Appendix 1:** Charter School Application Filing Status
- **Appendix 2:** Summary – CSFA's Preliminary Financially Sound Determinations
- **Appendix 3:** Additional Project Statistics
- **Appendix 4:** Summary Descriptions for Applicant's Receiving a Preliminary Apportionment under the Charter School Facilities Program (CSFP)

Appendix 1: Charter School Application Filing Status

FILING STATUS	DISTRICT	COUNTY	CHARTER SCHOOL	TOTAL PROJECT COST	GRADE LEVEL	OUTCOME OF APPLICATION
Charter	Alameda USD	Alameda	ACLC New Campus	$ 3,690,022	9–12	Not Financially Sound
Charter	Oakland USD	Alameda	Oakland School for the Arts	9,967,844	9–12	Preliminary Apportionment
Charter	Oakland USD	Alameda	Oakland Unity High	7,038,638	9–12	Not Eligible
Charter	Buckeye Union ESD	El Dorado	California Montessori Project – Shingle Springs Campus	5,310,746	7–8	Preliminary Apportionment
Charter	Fresno USD	Fresno	University High	11,603,850	9–12	Preliminary Apportionment
Charter	Fresno USD	Fresno	KIPP – Academy Fresno	4,156,628	7–8	Preliminary Apportionment
Charter	Jacoby Creek Charter District	Humboldt	Jacoby Creek	1,362,964	7–8	Preliminary Apportionment
Charter	Centinela Valley	Los Angeles	Environmental High	13,914,378	9–12	Preliminary Apportionment
Charter	Centinela Valley	Los Angeles	Media Arts Academy at Centinela	12,877,178	9–12	Withdrawn by Charter School
Charter	Inglewood USD	Los Angeles	Animo Inglewood Charter High	12,268,618	9–12	Preliminary Apportionment
Charter	Inglewood USD	Los Angeles	Today's Fresh Start	12,605,650	K–6	Preliminary Apportionment
Charter	Long Beach USD	Los Angeles	New City School	28,412,986	7–8	Not Eligible
Charter	LAUSD	Los Angeles	Vaughn Elementary Language Academy	11,344,418	K–6	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Vaughn High School Academy	19,689,644	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Oscar de La Hoya Charter High School	11,816,346	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Animo Downtown Charter High	12,142,552	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Animo South Los Angeles Charter High	12,457,476	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Animo Venice Charter High	12,328,892	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Port of Los Angeles High School	16,335,234	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	KIPP – Academy of Opportunity	7,619,520	7–8	Returned Unfunded
Charter	LAUSD	Los Angeles	KIPP – Los Angeles College Prep	6,797,928	7–8	Returned Unfunded
Charter	LAUSD	Los Angeles	Chime Charter Middle	3,264,680	7–8	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Aspire – Los Angeles 6–12 Charter	19,669,826	9–12	Preliminary Apportionment
Charter	LAUSD	Los Angeles	Aspire – Los Angeles K–5 Charter	13,267,148	K–6	Returned Unfunded
Charter	LAUSD	Los Angeles	Watts Learning Center	4,808,544	K–6	Not Eligible
Charter	Elk Grove USD	Sacramento	California Montessori Project – Elk Grove Campus	11,834,282	7–8	Preliminary Apportionment
Charter	Sac City	Sacramento	KIPP – Sol Aureus College Prep	4,370,466	7–8	Not Eligible
Charter	Sacramento City USD	Sacramento	VAPAC Senior High	13,023,554	9–12	Not Eligible
Charter	Sacramento City USD	Sacramento	California Montessori Project – Capitol Campus	10,220,268	7–8	Not Eligible
Charter	Colton Joint USD	San Bernardino	Las Banderas Academy Charter	9,866,692	9–12	Withdrawn by Charter School
Charter	San Francisco USD	San Francisco	City Arts and Tech High	14,124,484	9–12	Preliminary Apportionment
Charter	Alum Rock ESD	Santa Clara	Escuela Popular	8,037,352	7–8	Not Eligible
Charter	East Side Union High	Santa Clara	Escuela Popular	19,133,850	9–12	Not Eligible
Charter	East Side Union High	Santa Clara	MACSA Academia Calmecac Charter High School	6,964,742	9–12	Not Eligible
Charter	Gilroy USD	Santa Clara	MACSA El Portal Leadership	9,595,954	9–12	Returned Unfunded
Charter	Vallejo City USD	Solano	Mare Island Technology Academy	7,047,988	9–12	Returned Unfunded
Charter	Hesperia USD	San Bernardino	Crosswalk Charter	6,556,218	9–12	Preliminary Apportionment
Charter	Rocklin USD	Placer	Maria Montessori	5,560,948	7–8	Preliminary Apportionment
Charter	Temecula Valley USD	Riverside	Temecula Preparatory	4,669,180	7–8	Preliminary Apportionment
Charter	Temecula Valley USD	Riverside	French Valley Charter	4,057,738	7–8	Preliminary Apportionment
District	Kingsburg ESD	Fresno	South Campus	4,679,472	K–6	Not Eligible
District	Lemoore ESD	Kings	Lemoore Elementary University Charter	3,940,630	7–8	Returned Unfunded

FILING STATUS	DISTRICT	COUNTY	CHARTER SCHOOL	TOTAL PROJECT COST	GRADE LEVEL	OUTCOME OF APPLICATION
District	LAUSD	Los Angeles	Los Angeles Leadership Academy	18,166,664	9–12	Preliminary Apportionment
District	LAUSD	Los Angeles	Camino Nuevo Secondary Academy	10,964,168	7–8	Preliminary Apportionment
District	LAUSD	Los Angeles	Accelerated Charter Elementary	11,756,256	K–6	Preliminary Apportionment
District	LAUSD	Los Angeles	Academia Semillas del Pueblo	13,557,546	7–8	Preliminary Apportionment
District	LAUSD	Los Angeles	View Park Prep	12,274,102	K–6	Withdrawn by District
District	LAUSD	Los Angeles	College Ready Academy	15,955,934	9–12	Not Financially Sound
District	Elk Grove USD	Sacramento	Elk Grove Charter	3,547,830	9–12	Preliminary Apportionment
District	Vacaville USD	Solano	Buckingham Charter High	9,739,200	9–12	Withdrawn by District

TOTAL PROJECT COST: $ 514,397,228

Note: Total project costs for those projects that were deemed ineligible or not financially sound may be estimates.

Appendix 2: Summary – CSFA's Preliminary Financially Sound Determinations

CHARTER SCHOOL	SCHOOL DISTRICT	COUNTY	PROJECT COST	ESTIMATED ANNUAL LEASE PAYMENT	FINANCIAL SOUNDNESS RECOMMENDATION	STAFF COMMENTS
Academia Semillas Del Pueblo	Los Angeles Unified School District	Los Angeles	$ 13,557,546	$ 416,159	Yes	Meets minimum debt service coverage—130%, 247.4% and 256.6% in 2006–07 through 2008–09. CSFP lease represents 13–16% of revenues.
Accelerated Charter Elementary School	Los Angeles Unified School District	Los Angeles	11,756,256	360,867	Yes	Financial projections for FY 2009–10, first year of CSFP lease repayment, indicate projected debt service coverage ratio slightly higher than 100%.
Alameda Community Learning Center	Alameda Unified School District	Alameda	13,552,108	N/A	No	Not financially sound for purposes of CSFP.
Animo Downtown Charter High School (Los Angeles)	Los Angeles Unified School District	Los Angeles	12,142,552	372,725	Yes	Meets minimum debt service coverage—133% in 2008–09 (1st year of occupancy). CSFP lease represents 10.2% of revenues in 2008–09. Green Dot Public Schools is serving as co-borrower.
Animo Inglewood Charter High School	Inglewood Unified School District	Los Angeles	12,268,618	376,595	Yes	Meets minimum debt service coverage—136.5% in 2008–09 (1st year of occupancy). CSFP lease represents 10.2% of revenues in 2008–09. Green Dot Public Schools is co-borrower.
Animo South Los Angeles Charter High School	Los Angeles Unified School District	Los Angeles	12,457,476	382,392	Yes	Meets minimum debt service coverage—137.4% in 2008–09 (1st year of occupancy). CSFP lease represents 10% of revenues in 2008–09. Green Dot Public Schools is serving as co-borrower.
Animo Venice Charter High School	Los Angeles Unified School District	Los Angeles	12,328,892	378,445	Yes	Meets minimum debt service coverage—159.6% in 2008–09. Green Dot Public Schools is serving as co-borrower.
Aspire Public School (Elementary School)	Los Angeles Unified School District	Los Angeles	13,267,148	407,245	Yes	Debt service coverage ratios are slightly above 100% for next three years.
Aspire Public School (Secondary School)	Los Angeles Unified School District	Los Angeles	19,669,826	603,780	Yes	Debt service coverage ratios are slightly above 100% for next three years.
California Montessori Project – Elk Grove Campus	Elk Grove Unified School District	Sacramento	11,834,282	363,262	Yes	School meets minimum debt service coverage—231%, 275% and 254% each year beginning 2006–07. CSFP lease represents 5.8% of revenues from 2006–07 through 2008–09.
California Montessori Project – Shingle Springs	Buckeye Union School District	El Dorado	5,310,746	163,017	Yes	School meets minimum debt service coverage—231%, 275% and 254% each year beginning 2006–07. CSFP lease represents 5.8% of revenues from 2006–07 through 2008–09.
Camino Nuevo Charter Academy	Los Angeles Unified School District	Los Angeles	10,964,168	336,554	Yes	School meets minimum debt service coverage—152.1%, 170.8% and 169.1% in 2006–07 through 2008–09. CSFP lease represents 9.7% of revenues.

CHARTER SCHOOL	SCHOOL DISTRICT	COUNTY	PROJECT COST	ESTIMATED ANNUAL LEASE PAYMENT	FINANCIAL SOUNDNESS RECOMMENDATION	STAFF COMMENTS
CHIME Charter Middle School	Los Angeles Unified School District	Los Angeles	3,264,680	100,212	Yes	Meets minimum debt service coverage—137%, 212%, and 211% from 2006–07 through 2008–09.
City Arts and Technology High (Envision Schools)	San Francisco Unified School District	San Francisco	14,124,484	433,562	Yes	Strong debt service coverage (316% in 2007–08 and 356% in 2008–09) but relies on relatively high fund raising projections.
College-Ready Academy	Los Angeles Unified School District	Los Angeles	18,675,986	N/A	No	Does not meet criteria to be determined financially sound; key personnel lack prior charter experience.
Crosswalk: Hesperia Experiential Learning Pathways	Hesperia Unified School District	San Bernardino	6,556,218	201,248	Yes	School meets minimum debt service coverage—175%, 183% in 2007–09 to 2008–09. School must rely on cash on hand to make lease payment in 2006–07. CSFP lease represents 9–11% of revenues 2006–07 to 2008–09.
El Portal Leadership Academy High (MACSA)	Gilroy Unified School District	Santa Clara	9,595,954	1,315,477 (after lump sum payment)	Yes	School meets minimum debt service coverage—108.3%, 178.4% and 356% in three years beginning 2006–07. CSFP lease represents 3–4% of revenues in first years of occupancy. School is relying on funding from a grant and a local contribution to pay down CSFP lease burden.
Elk Grove Charter School	Elk Grove Unified	Sacramento	3,547,830	108,903	Yes	School is district-run, and district will service as co borrower. Coverage is 190–250% for the first years in new facility. CSFP lease represents 6–7% of revenues for same period.
Environmental Charter High School	Centinela Valley Union High School District	Los Angeles	13,914,378	427,113	Yes	School meets debt service coverage in 2006–07 with 106% and 116% in 2008–09. Contributions of $165,000 and $325,000 are anticipated annually in projected years.
Escuela Popular del Pueblo	East Side Union High School District	Santa Clara	8,433,352	N/A	No	CSFA was unable to determine the school was financially sound based on pending issues between the school and the chartering authority.
Jacoby Creek Charter District	Jacoby Creek Charter District	Humboldt	1,362,964	41,837	Yes	Minimum debt service coverage of 100% met in first year by using cash on hand, school meets debt service comfortably in subsequent years. School has relatively strong fund balance—$453,125 as of June 2004.
KIPP Academy Fresno	Fresno Unified School District	Fresno	4,156,628	127,591	Yes	Debt service is 113% in 2007–08 and 187% in 2008–09. Contributions represent only 8% of total expenditures.
KIPP Academy of Opportunity	Los Angeles Unified School District	Los Angeles	7,619,520	233,887	Yes	Debt service coverage is at least 173% for the three years projected. Without contributions, KIPP is able to maintain debt service coverage of no less than 130%.
KIPP Los Angeles College Preparatory School	Los Angeles Unified School District	Los Angeles	6,797,928	208,668	Yes	Debt Service Coverage is at least 142% for the three years projected, including contributions.

CHARTER SCHOOL	SCHOOL DISTRICT	COUNTY	PROJECT COST	ESTIMATED ANNUAL LEASE PAYMENT	FINANCIAL SOUNDNESS RECOMMENDATION	STAFF COMMENTS
Lemoore Elementary University School	Lemoore Union Elementary School District	Kings	3,940,630	122,627 (after lump sum payment)	Yes	School is a district-run charter school. Debt service coverage is over 400% through 2007–08. School is not reliant on contributions for operations.
Los Angeles Leadership Academy	Los Angeles Unified School District	Los Angeles	18,166,664	557,640	Yes	Debt service coverage projected at double required level at 202% and 234% in 2009–10 and 2010–11.
Mare Island Technology Academy High School	Vallejo City Unified School District	Solano	7,047,988	216,343	Yes	School exceeds debt service coverage threshold with 296% to 487% in 2006–07 to 2008–09. CSFP lease represents approximately 5% of projected revenue through 2008–09.
Maria Montessori Charter Academy	Rocklin Unified School District	Placer	5,560,948	170,698	Yes	Debt service coverage is no less than 110% through 2008–09.
Oakland School of the Arts	Oakland Unified School District	Alameda	9,967,844	N/A (after lump sum payment)	Yes	Match requirement met through contribution of City of Oakland Community & Economic Development Agency.
Oscar de la Hoya Animo Charter High School	Los Angeles Unified School District	Los Angeles	11,816,346	362,712	Yes	Meets minimum debt service coverage—132.9% in 2008–09 (1st year of occupancy). CSFP lease represents 9.4% of revenues in 2008–09. Green Dot Public Schools is serving as co-borrower.
Port of Los Angeles	Los Angeles Unified School District	Los Angeles	16,335,234	501,423	Yes	School, to begin in 2005–06, is 100% reliant on contributions and grants. Contributions projected at 18% in 2005–06 and 2.8% of revenue in 2008–09.
Temecula Preparatory School	Temecula Valley Unified School District	Riverside	4,669,180	N/A (after lump sum payment)	Yes	Match requirement to be met by Temecula Valley Unified School District. School is not reliant on contributions.
Temecula Valley Charter School	Temecula Valley Unified School District	Riverside	4,057,738	N/A (after lump sum payment)	Yes	Match requirement being met by Temecula Valley Unified School District. Debt Service Coverage is not applicable.
Today's Fresh Start Charter School	Inglewood Unified School District	Los Angeles	12,605,650	386,940	Yes	School meets minimum debt service coverage—132.5%, 185.4% and 256.5 in 2006–07 to 2008–09.
University High School	Fresno Unified School District	Fresno	11,603,850	313,215	Yes	School meets minimum debt service coverage—123.4%, 108.4% and 155% in 2006–07 to 2008–09.
Vaughn Elementary Language Academy	Los Angeles Unified School District	Los Angeles	11,344,418	174,113	Yes	Projections indicate 50% of local matches can be funded via lump sum contributions. If 50% of local match is funded in the form of two CSFP leases, debt service coverage ratios are 837.1%, 694.8% and 732.8% for fiscal years 2006–07 to 2008–09. CSFP lease represents 2.5% of revenues.
Vaughn High School Academy	Los Angeles Unified School District	Los Angeles	19,689,644	302,194	Yes	Projections indicate 50% of local matches can be funded via lump sum contributions. If 50% of local match is funded in the form of two CSFP leases, debt service coverage ratios are 837.1%, 694.8% and 732.8% for fiscal years 2006–07 to 2008–09. CSFP lease represents 2.5% of revenues.

CHARTER SCHOOL	SCHOOL DISTRICT	COUNTY	PROJECT COST	ESTIMATED ANNUAL LEASE PAYMENT	FINANCIAL SOUNDNESS RECOMMENDATION	STAFF COMMENTS
View Park Preparatory	Los Angeles Unified School District	Los Angeles	15,821,048	N/A	N/A	Applicant withdrew application prior to completion of review.
Visual and Performing Arts Charter	Sacramento City Unified School District	Sacramento	14,914,986	N/A	No	Does not meet Financially Sound criteria; key personnel lack prior charter experience.
Watts Learning Center	Los Angeles Unified School District	Los Angeles	4,808,544	116,906	Yes	Charter school was ineligible.

TOTAL PROJECT COST: $416,510,252

Appendix 3: Additional Project Statistics

The purpose of this chart is to show the enrollment of the charter school at the time of project completion.

SCHOOL	SCHOOL DISTRICT	COUNTY	PROJECT COST (A)	ESTIMATED ANNUAL LEASE PAYMENT (B)	CURRENT ENROLLMENT (C)	PROJECTED ENROLLMENT AT COMPLETION (C)
Academia Semillas Del Pueblo	Los Angeles Unified School District	Los Angeles	$ 13,557,546	$ 416,159	250	489
Accelerated Charter Elementary School	Los Angeles Unified School District	Los Angeles	11,756,256	360,867	59	240
Animo Downtown Charter High School (Los Angeles)	Los Angeles Unified School District	Los Angeles	12,142,552	372,725	N/A	525
Animo Inglewood Charter High School	Inglewood Unified School District	Los Angeles	12,268,618	376,595	411	525
Animo Oscar de la Hoya Charter High School	Los Angeles Unified School District	Los Angeles	11,816,346	362,712	279	530
Animo South Los Angeles Charter High School	Los Angeles Unified School District	Los Angeles	12,457,476	382,392	142	525
Animo Venice Charter High School	Los Angeles Unified School District	Los Angeles	12,328,892	378,445	145	525
Aspire Public School (Secondary School)	Los Angeles Unified School District	Los Angeles	19,669,826	$603,780	N/A	420
California Montessori Project – Elk Grove Campus	Elk Grove Unified School District	Sacramento	11,834,282	363,262	228	295
California Montessori Project – Shingle Springs	Buckeye Union School District	El Dorado	5,310,746	163,017	273	350
Camino Nuevo Charter Academy	Los Angeles Unified School District	Los Angeles	10,964,168	336,554	N/A	450
CHIME Charter Middle School	Los Angeles Unified School District	Los Angeles	3,264,680	100,212	152	224
City Arts and Technology High (Envision Schools)	San Francisco Unified School District	San Francisco	14,124,484	433,562	110	440
Crosswalk: Hesperia Experiential Learning Pathways	Hesperia Unified School District	San Bernardino	6,556,218	201,248	185	340
Elk Grove Charter School	Elk Grove Unified	Sacramento	3,547,830	108,903	290	250
Environmental Charter High School	Centinela Valley Union High School District	Los Angeles	13,914,378	427,113	309	440
Jacoby Creek Charter District	Jacoby Creek Charter District	Humboldt	1,362,964	41,837	416	418
KIPP Academy Fresno	Fresno Unified School District	Fresno	4,156,628	127,591	60	280
Los Angeles Leadership Academy	Los Angeles Unified School District	Los Angeles	18,166,664	557,640	262	910
Maria Montessori Charter Academy	Rocklin Unified School District	Placer	5,560,948	170,698	164	270
Oakland School of the Arts	Oakland Unified School District	Alameda	9,967,844	N/A	300	500
Port of Los Angeles	Los Angeles Unified School District	Los Angeles	16,335,234	501,423	N/A	1,000
Temecula Preparatory School	Temecula Valley Unified School District	Riverside	4,669,180	N/A	416	550
Temecula Valley Charter School	Temecula Valley Unified School District	Riverside	4,057,738	N/A	225	285

SCHOOL	SCHOOL DISTRICT	COUNTY	PROJECT COST (A)	ESTIMATED ANNUAL LEASE PAYMENT (B)	CURRENT ENROLLMENT (C)	PROJECTED ENROLLMENT AT COMPLETION (C)
Today's Fresh Start Charter School	Inglewood Unified School District	Los Angeles	12,605,650	386,940	407	800
University High School	Fresno Unified School District	Fresno	11,603,850	313,215	376	390
Vaughn Elementary Language Academy	Los Angeles Unified School District	Los Angeles	11,344,418	174,113	N/A	400
Vaughn High School Academy	Los Angeles Unified School District	Los Angeles	19,689,644	302,194	N/A	500

(A) OPSC's total project cost.
(B) Estimated by CSFA based upon four and a half percent interest rate, 30-year maturity.
(C) Provided by applicants.

Appendix 4: Summary Descriptions for Applicant's Receiving a Preliminary Apportionment under the Charter School Facilities Program (CSFP)[1]

California School Finance Authority
Charter School Facilities Program

Academia Semillas Del Pueblo

Project School:	Academia Semillas Del Pueblo
Project Location:	Los Angeles
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$13,557,546
Grant Amount:	$6,778,773
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$416,159
First Year of Occupancy of New Project:	2006–07

Organizational Information: Academia Semillas Del Pueblo (Academia) is a nonprofit, public benefit corporation founded to serve urban children of immigrant native families and to provide an education based upon their own language and culture. The school is committed to justice, freedom and dignity in education. Academia received its charter from the Los Angeles Unified School District (LAUSD) in December 2001. The charter is set to expire on August 1, 2007.

Curriculum: Academia's curriculum is designed to engage students' talents to think, question, analyze, judge and create new knowledge through a broad curriculum that incorporates dual language enrichment and aspects of the culture and history of the different peoples residing in the area.

Project Description: The proposed project site, within a mile of Academia's existing school site in the area of northeast Los Angeles called El Serrano, will accommodate Academia's plan to expand to a kindergarten through eighth grade school. The school projects it will serve 489 students by 2006–07, the first year of occupancy of the project. Academia expects to complete the project in time for the 2006–07 school year. Therefore, its lease payment obligation would commence that school year. Academia has not needed to actively recruit students because of the Dual Language Program it offers to parents and children in an area in which many families are non English speakers.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

[1] Based on excerpts from CSFA Staff Reports.

The Accelerated School

Project School:	Accelerated Charter Elementary School
Project Location:	South Los Angeles, near existing facility
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$11,756,256
Grant Amount:	$5,878,128
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$360,867
First Year of Occupancy of New Project:	2009–10

Organizational Information: The Accelerated School (Accelerated) is a nonprofit, public benefit corporation, based on the Accelerated School Model developed in 1986 by Dr. Henry Levin. All of Accelerated's programs, including Accelerated Charter Elementary School (ACES), rely on involved parents, committed and talented teachers, high expectations for students and parents, strong school leadership, supportive and experienced board members, shared decision making and accountability. The separate charter for ACES was granted by the LAUSD in March 2003, and will expire in June 2009, after the fifth year of instruction.

Curriculum: A primary goal of ACES is to prepare students to succeed in rigorous college preparatory middle and high schools. The curriculum is based on the Accelerated Schools Model, a rigorous, nationally recognized standards-based curriculum dedicated to the idea that all children can accelerate their progress and achieve at high levels. Other goals include providing students with better educational opportunities than what are typically available in their areas; providing additional student seats in an impacted area; training local educators in the use of effective teaching practices; and encouraging innovation in other public schools that serve educationally disadvantaged students.

Description of Project to be Undertaken: Accelerated intends to construct a facility for ACES, its second elementary school in South Los Angeles. Currently sharing temporary portable facilities with Accelerated's other elementary, middle and high schools, it is anticipated that ACES will be on a site separate from the newly rebuilt main kindergarten through twelfth grade campus at Martin Luther King Jr. Boulevard and Main Street in South Los Angeles. The school projects that it will serve 240 students in kindergarten through fifth grade.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, The Accelerated School appears to be financially sound for the purposes of this preliminary apportionment.

Animo Downtown Charter High School

Project School:	Animo Downtown Charter High School
Project Location:	Downtown Los Angeles
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$12,142,552
Grant Amount:	$6,071,276
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$372,725
First Year of Occupancy of New Project:	2008–09

Organizational Information: Animo Downtown Charter High School (Animo Downtown) will be opened in Fall 2005 by Green Dot Public Schools, a nonprofit organization, in order to provide a small college preparatory high school experience for students from the Downtown community. Animo Downtown intends to follow Green Dot's school model in order to achieve its goal of creating "agents of change" who will positively impact the community. The charter was granted to Animo Downtown by the LAUSD on April 13, 2004, and it will expire on June 30, 2009.

Curriculum: Animo Downtown will emphasize a college preparatory curriculum for all students. It anticipates a competitive advantage over area high schools because of its small size (projected 525 students in fourth year of operations, versus an average public school competitor size of 4,111 students). Animo Downtown received its charter from the LAUSD on April 13, 2004. The current charter will expire on June 30, 2009. The chartering authority will provide governance and oversight to Animo Downtown but no additional services.

Project Description: Animo Downtown intends to construct a new high school at a site to be determined in Downtown Los Angeles, serving an estimated 500–525 students. The school expects to begin instructional operations in Fall 2005 at a temporary facility. Enrollment is expected to increase to 500–525 students by 2008–09, when it will occupy its permanent facilities. CSFP lease payments are expected to begin with occupancy in 2008–09.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Animo Inglewood Charter High School

Project School:	Animo Inglewood Charter High School
Project Location:	Inglewood
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$12,268,618
Grant Amount:	$6,134,309
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$376,595
First Year of Occupancy of New Project:	2008–09

Organizational Information: Animo Inglewood Charter High School (Animo Inglewood) was opened in August 2002 by Green Dot Public Schools, a nonprofit organization, in order to provide a small college preparatory high school experience for students from the Inglewood community. Animo Inglewood expects to follow Green Dot's school model to achieve its goal of creating "agents of change" who will positively impact the community. In 2004–05, 411 students were enrolled and 224 potential students are on the waiting list. Animo Inglewood received its charter from the CDE on December 5, 2001. The current charter will expire on June 30, 2005. Animo Inglewood has submitted a charter petition and renewal request to Inglewood Unified.

Curriculum: Animo Inglewood provides a small college preparatory high school experience for students from the Inglewood community which emphasizes a college preparatory curriculum for all students. Animo Downtown believes it has a competitive advantage because of its small size. It projects 525 students by 2006–07 as compared to an average public school competitor size of 1,848 students.

Project Description: Animo Inglewood plans to construct a permanent facility for its high school in Inglewood. The new facility is expected to be ready for occupancy in September 2008 and will serve an estimated 525 students.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Oscar De La Hoya Animo Charter High School

Project School:	Oscar De La Hoya Animo Charter High
Project Location:	Boyle Heights area of Los Angeles
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$11,816,346
Grant Amount:	$5,908,173
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$362,712
First Year of Occupancy of New Project:	2008–09

Organizational Information: Oscar De La Hoya Animo Charter High School was opened in August 2003 by Green Dot Public Schools, a nonprofit organization, in order to provide a small college preparatory high school experience for students from the Boyle Heights community. Oscar De La Hoya Animo will follow the Green Dot's school model to achieve its goal of creating "agents of change" who will positively impact the community. Oscar De La Hoya Animo received its charter from the LAUSD on May 27, 2003. The charter is scheduled to expire on June 30, 2008.

Curriculum: Oscar De La Hoya Animo enrolled 279 students in 2004–05, and records a waitlist of 53 students. According to the school, it has a competitive advantage over local schools because of its small size (projected total enrollment of 525 students in its fourth year of operations, versus an average public school competitor size of 4,892 students), and an emphasis on college preparatory curriculum for all students.

Project Description: Oscar De La Hoya Animo intends to construct a new high school at 1114 South Lorena Street in the Boyle Heights area of Los Angeles, serving an estimated 525 students. Instruction is expected to commence at the new facilities in September 2008.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Animo South Los Angeles Charter High School

Project School:	Animo South Los Angeles Charter High
Project Location:	South Los Angeles
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$12,457,476
Grant Amount:	$6,228,738
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$382,392
First Year of Occupancy of New Project:	2008–09

Organizational Information: Animo South Los Angeles Charter High School (Animo South LA) opened in September 2004 by Green Dot Public Schools, a nonprofit organization, to provide a small college preparatory high school experience for students from the South Los Angeles community. Green Dot's mission is to drive substantive change in high schools in the greater Los Angeles area, to ensure that all young adults receive high school educations for success in college, leadership and life. The charter was granted by the LAUSD on October 23, 2003, and is scheduled to expire on June 30, 2009.

Curriculum: Animo South LA intends to follow Green Dot's school model to achieve its goal of creating "agents of change" who will positively impact the community. The school will emphasize a college preparatory curriculum for all students. According to the school, it has a competitive advantage over other local schools because of its small size (projected 525 students in fourth year of operations, versus an average public school competitor size of 4,020 students). In Animo South LA's first year of operations (2004–05), 142 ninth graders were enrolled and 55 potential students are on the waiting list.

Project Description: Animo South LA will be constructing a new high school in South Los Angeles, to serve an estimated 500–525 students. Occupancy of the new facilities is expected in time for the 2008–09 school year.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Animo Venice Charter High School

Project School:	Animo Venice Charter High School
Project Location:	Venice
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$12,328,892
Grant Amount:	$6,164,446
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$378,445
First Year of Occupancy of New Project:	2008–09

Organizational Information: Animo Venice Charter High School (Animo Venice) was opened in September 2004 by Green Dot Public Schools, a nonprofit organization, to provide a small college preparatory high school experience for students from the Venice community. Animo Venice intends to follow Green Dot's school model in order to achieve its goal of creating "agents of change" who will positively impact the community. Animo Venice received its charter from the LAUSD on April 13, 2004. The current charter will expire on June 30, 2009.

Curriculum: Animo Venice emphasizes a college preparatory curriculum for all students. The school bases its competitive advantage on its small size (projected 525 students in fourth year of operations, versus area high school enrollment of more than 3,000 students). Animo Venice reported 145 ninth graders were enrolled for 2004–05, its first year of instructional operations, and a waitlist of 30 potential students.

Project Description: Animo Venice will be constructing a new high school at a site in the Venice district of Los Angeles, which will serve an estimated 525 students. Occupancy of the new facility is anticipated for the 2008 09.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Aspire Public School (Secondary School)

Project School:	Secondary School
Project Location:	Los Angeles, District Six of LAUSD
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$19,669,826
Grant Amount:	$9,834,913
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$603,780
First Year of Occupancy of New Project:	2006–07

Organizational Information: Aspire is a nonprofit, public benefit corporation and considered an educational management organization. The Aspire organization opened its first charter school in 1998. Since that time, Aspire has grown significantly, operating eleven charter schools in California in the current school year. Believing that families benefit from greater public school choice, because no single school type can serve all students, Aspire is working with the LAUSD to help create new alternatives for families in that district. Aspire targets low-income neighborhoods where a high percentage of students receive free or reduced lunch, and where many existing schools are overcrowded and have low relative API rankings. Aspire received its charter from LAUSD in June 2003 (expires in June 2009). In July 2003, Aspire received preliminary apportionments of Proposition 47 funds from the CSFP for a high school in Oakland and an elementary school in Stockton.

Curriculum: Aspire implements curriculum packages created by other parties, complementary to the Aspire system and aligned to the California state standards. The school's educational program, simultaneously rigorous and relevant to the students, will emphasize interdisciplinary thinking across subject areas.

Project Description: The proposed site for the new charter high school will be in the Huntington Park area of Los Angeles County, bounded by Interstate 10 to the North, Highway 710 to the East, Firestone Boulevard to the South and Alameda Boulevard to the West. The campus will consist of approximately five acres with a multi-story facility. Site development will involve the retrofitting of an existing structure to DSA standards for conversion to a charter school. The project is expected to be completed in time for the 2006 07 school year, and will serve 420 students in the sixth through twelfth grades.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

California Montessori Project – Elk Grove Campus

Project School:	Elk Grove Campus
Project Location:	Elk Grove Boulevard, Elk Grove
Chartering Entity:	Wheatland Elementary School District
Total Project Cost:	$11,834,282.
Grant Amount:	$5,917,141
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$363,262
First Year of Occupancy of New Project:	2006–07

Organizational Information: California Montessori Project (CMP) was created to provide students in kindergarten through eighth grade access to a tuition-free Montessori education. CMP, a nonprofit public-benefit corporation, has a corporate office in Carmichael and five campuses in four different school districts: Buckeye Union School District, Elk Grove Unified School District, Sacramento City Unified School District, and San Juan Unified School District. Wheatland Elementary School District awarded the charter in January 2001. CMP plans to obtain a charter from the CDE to allow it to open Montessori charter schools throughout California. CMP contends that there is a very high demand for tuition-free Montessori elementary and middle schools.

Curriculum: The Montessori program provides an individualized education, focusing on individual developmental needs while including the students in a multi-age classroom. CMP integrates Montessori teaching and philosophy with California standards to provide an enriched dynamic curriculum for elementary age students. CMP offers all day kindergarten, which is paced to meet individual development needs. In addition to acquiring core academic education, middle school students learn to interpret core data in terms of the social and environmental issues of the world, including basic financial skills. Montessori's middle school curriculum also considers the unique developmental stages of adolescent children. Class sizes average about 20 students per teacher, and each campus is limited to a maximum of 300 students to maintain a community atmosphere. CMP is in the process of obtaining accreditation from the national Montessori organization and from the Western Association of Schools and Colleges.

Project Description: CMP intends to renovate and add classrooms to its Elk Grove campus located at 828 Elk Grove Boulevard in Elk Grove. This expansion will increase capacity from its current 228 students to 295 students in kindergarten through grade eight. This project is targeted for completion in 2005–06.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

California Montessori Project – Shingle Springs

Project School:	Shingle Springs Campus
Project Location:	Buckeye Road, Shingle Springs
Chartering Entity:	Wheatland Elementary School District
Total Project Cost:	$5,310,746
Grant Amount:	$2,655,373
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$163,017
First Year of Occupancy of New Project:	2006–07

Organizational Information: California Montessori Project (CMP) was created to provide elementary and middle school students access to a tuition-free Montessori education. CMP, a nonprofit public-benefit corporation, has five campuses in four different school districts: Buckeye Union School District, Elk Grove Unified School District, Sacramento City Unified School District, and San Juan Unified School District. The charter was received from Wheatland Elementary School District in January 2001. CMP plans to obtain a charter from the State Department of Education to allow it to open Montessori charter schools throughout California. CMP contends that there is a very high demand for tuition-free Montessori elementary and middle schools.

Curriculum: The Montessori program has been in existence since the 1920's and provides an individualized education, focusing on individual developmental needs while including the students in a multi-age classroom. CMP offers all day kindergarten, which is paced to meet individual development needs. Montessori teaching and philosophy is integrated with California standards to provide an enriched dynamic curriculum for elementary age students. In addition to acquiring core academic education, middle school students learn to interpret core data in terms of the social and environmental issues of the world, including basic financial skills. Montessori's middle school curriculum also considers the unique developmental stages of adolescent children. CMP is in the process of obtaining accreditation from the national Montessori organization and from the Western Association of Schools and Colleges.

Project Description: CMP is renovating and adding classrooms at its Shingle Springs campus located on Buckeye Road in Shingle Springs (Shingle Springs Campus) to expand capacity from its current 273 students to 350 students for kindergarten through eighth grade. CMP advises that this project is targeted for completion in 2005–06.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Camino Nuevo Charter Academy

Project School:	Camino Nuevo Charter Academy
Project Location:	La Fayette Park Place, Los Angeles
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$10,964,168
Grant Amount:	$5,482,084
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$336,554
First Year of Occupancy of New Project:	2006–07

Organizational Information: The Camino Nuevo Charter Academy (CNCA) is a nonprofit, public-benefit corporation. CNCA became a full kindergarten through grade twelve education organization with the approval of charters by the LAUSD for an elementary school in 1999 (expires 2005), the middle school in 2001 (expires 2006), and the high school in 2004 (expires 2009), and operates on multiple site-based campuses, in different grade combinations. In 2004 05, 1,097 students are enrolled in grades K through 8, with an additional 137 students enrolled in the ninth grade at CNCA's high school. There are 1,077 potential students on the schools' combined waiting list. CNCA has verified that they are in the process of preparing the petition for renewal of the elementary school's charter that will expire in 2005, and that they are working with LAUSD, their chartering entity, to facilitate the independent evaluation required by the district's Program Evaluation and Research Branch to ensure a renewal of its elementary charter.

Curriculum: CNCA provides extensive core and supplemental (art, computer, and ecology) programs within the context of a comprehensive literacy program. The core of the curriculum is aligned with the California State Board of Education Contents Standards. With strong support from two allied organizations, Pueblo Nuevo Development and Excellent Education Development, CNCA's goals include increasing high school completion and college attendance as a means of breaking the cycle of poverty.

Project Description: CNCA is planning a new elementary school to accommodate 450 students in grades K through 8. The site for the new facility (the La Fayette Park Place campus) will be near CNCA's other elementary school (the Burlington Campus), west of downtown Los Angeles in the densely populated neighborhoods of MacArthur Park and mid-Wilshire. CNCA expects to complete the project in time for the 2006–07 school year.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

CHIME Institute

Project School:	CHIME Charter Middle School
Project Location:	Collier Street, Woodland Hills
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$3,264,680
Grant Amount:	$1,632,340
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$100,212
First Year of Occupancy of New Project:	2005–06

Organizational Information: The CHIME Institute for Children With Special Needs (CHIME Institute) is a nonprofit, public-benefit corporation. CHIME Institute (derived from Community Honoring Inclusive Model Education) administers a center for educator development, a research center, and four inclusive learning communities. Like CHIME Institute's preschool founded in 1990 and its charter elementary school that began in 2001, the charter middle school is a demonstration school site of inclusive education for students with mild to significant disabilities in general education classrooms. CHIME Institute's goal is that fifteen to twenty percent of the students at each school are children with mild to severe disabilities. Each class of twenty-eight students includes approximately two to four students with disabilities, one to two students with more severe disabilities that require intensive support, and twenty-two students without disabilities who are typically developing and/or considered to be gifted and high achieving. The charter for CHIME Charter Middle School (CHIME) was granted by the LAUSD for a five year period commencing July 1, 2003 and ending June 30, 2008. CHIME reports that it is currently in the process of writing an amendment to the charter to allow its eighth graders to remain at the middle school through ninth grade.

Curriculum: The education program is based on constructivist approaches, and designed to engage students in problem solving activities at levels appropriate to their individual needs. In collaboration with California State University, Northridge (CSUN), LAUSD and CHIME Institute's schools serve as a laboratory in which faculty and students investigate how children learn, and as a resource on inclusive education for educators, parents and policy makers.

Project Description: To increase enrollment, CHIME is seeking acquisition of portable classrooms on land already owned by LAUSD. In 2004 05, CHIME's second year of operations, 152 students in grades six through eight were enrolled. There are 55 potential students on the waiting list. Instructional operations at the new facilities are planned for 2005–06.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Crosswalk: Hesperia Experiential Learning Pathways

Project School:	Crosswalk: Hesperia Experiential Learning Pathways
Project Location:	Hesperia
Chartering Entity:	Hesperia Unified School District
Total Project Cost:	$6,556,218
Grant Amount:	$3,278,109
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$201,248
First Year of Occupancy of New Project:	2006–07

Organizational Information: Crosswalk: Hesperia Experiential Learning Pathways Charter School (Crosswalk) is a nonprofit, public-benefit corporation. Crosswalk was organized for the purpose of educating students, especially those who may be economically, educationally and/or socially disadvantaged in grades seven through twelve. The school will educate students with essential life skills using individualized experiential academic, career and technical pathways. Crosswalk initially was granted a three-year charter by the Hesperia Unified School District in February 2001. The charter was renewed in 2004, and is set to expire on June 30, 2009. Crosswalk is in the process of applying for another charter, which will be a Montessori kindergarten through grade four program. The K–4 program will add 300 students and will be housed in an adjacent facility.

Curriculum: Crosswalk offers students structured opportunities to develop their sociocultural skills, specifically the use of a daily homeroom, a student council and the use of a school-wide behavior rubric. Teachers employ the use of questioning techniques, with an emphasis on multiple problem-solving activities, activity-based instruction, connections with students' own experiences and interests, field trips, interviews, projects, tutors (both peer and adult), flexible block scheduling and community service. Crosswalk's competitive advantages include small class size (16–20 students), individualized instruction in an extended day and Friday experiential activities for interest and career exploration.

Project Description: Crosswalk will be constructing a permanent facility for grades five through twelve by the start of the 2006–07 academic year. The school is projected to serve 340 students by 2008–09. The middle school grades (fifth through eighth) will compose the majority of students while the high school will only serve 80 100 students, and will primarily serve students with special needs or gifted students who need a flexible schedule. Ten prospective students are on Crosswalk's waiting list.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Elk Grove Unified School District

Project School:	Elk Grove Charter School
Project Location:	Las Flores High School, Elk Grove
Chartering Entity:	Elk Grove Unified School District
Total Project Cost:	$3,547,830
Grant Amount:	$1,773,915
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$108,903
First Year of Occupancy of New Project:	2006–07

Organizational Description: Elk Grove Charter School (EGCS) was established by the Elk Grove Unified School District (EGUSD) in the Fall of 1999. The charter school was not incorporated as a separate nonprofit entity, but is a district-operated charter school, governed by the Elk Grove Board of Education, a body elected by voters within the school district. Originally created to utilize a home schooling/independent study/educational field trip format that involves parents as home teachers, direct instruction classes are now part of the curriculum for all grades. The school is governed by the Elk Grove Board of Education, a body elected by voters within the school district. The school's current charter expires in 2009.

Curriculum: The curriculum is focused on general education with specialization to individual student needs. The program is a combination of small classroom and independent study. Students attend school daily in small blocks (usually about half a day), in addition to independent study. Elementary students have been divided into small groups based on their grade. Grades seven and eight are team-taught and high school students attend either a morning or afternoon session as well as individual classes taken through the Regional Occupation Program, community college and/or community classroom for older students. All students receive district core curriculum using the same texts that have been adopted by the district. Each student is assigned a teacher-consultant who works with the student and family to prepare an individualized plan.

Project Description: EGCS plans to construct a school to house more than 250 students in grades three to twelve. The facility will be built on land currently owned by EGUSD on a 2.34 acre site adjacent to the existing Las Flores Continuation High School. There will be one building constructed with CSFP funds, with six to nine "teaching stations." ECGS expects to complete the project in time for the 2006 07 school year. Currently, the school, located in Sacramento County, is housed on two campuses—9075 Elk Grove Boulevard and the Elk Grove Teen Center, with a current enrollment of 290 students, well above the 200 projected.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Environmental Charter High School

Project School:	Environmental Charter High School
Project Location:	Larch Avenue, Lawndale
Chartering Entity:	Lawndale Elementary School District
Total Project Cost:	$13,914,378
Grant Amount:	$6,957,189
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$427,113
First Year of Occupancy of New Project:	2006–07

Organizational Information: Environmental Charter High School (ECHS) was started by members in the Lawndale community who wanted additional high school choices for students. ECHS was incorporated as a nonprofit school in 2001, and commenced instruction that September with 100 freshmen. After middle school, students attend high schools in the Centinela Valley Union High School District or other charter schools in the area. The local charter schools are small schools that offer a large variation in their educational models. In 2004, the charter of ECHS was renewed for five years, until 2009. In addition, the Western Association of Schools and Colleges authorized ECHS with interim candidacy as an accredited high school.

Curriculum: ECHS provides a college preparatory curriculum that focuses on the local community and local environment. The core content of math, English, science and social sciences is complemented by electives using a project-based, experience approach. ECHS uses clusters of students (on average, 25) who share the same teachers and classes for a minimum of two years, which promotes stronger relationships. This arrangement enables teachers to work together as teams in solving classroom issues. The school has a smaller learning environment. A small athletic program has been added to increase and maintain enrollment.

Project Description: ECHS plans to build a new high school facility to house 440 students. The total square footage for the building will be approximately 33,500. The site will allow approximately 3,600 square feet of space for outside environmental learning areas. In addition, the building will incorporate an environmental building approach, using water conservation techniques, some recycled materials for building supplies, "daylighting" (using high ceilings and other means to bounce light deep into the facility), natural ventilation and renewable energy for some of the building's needs. ECHS expects to complete the project in time for the 2006–07 school year. Therefore, its lease payment obligation would begin with that school year.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Envision Schools

Project School:	City Arts And Technology High
Project Location:	Area South of Market and East of Castro
Chartering Entity:	San Francisco Unified School District
Total Project Cost:	$14,124,484
Grant Amount:	$7,062,242
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$433,562
First Year of Occupancy of New Project:	2007–08

Organizational Information: Envision Schools is a nonprofit, public-benefit corporation. Organized to focus on student achievement and to share its practices with local school districts, Envision is dedicated to the transformation of public education. Founded in 2001, Envision is working to create a geographic cluster of six small, public charter high schools to serve the diverse student bodies in the Bay Area. In addition to City Arts & Technology High School (CAT) in San Francisco, Envision Schools also operates the Marin School of Arts and Technology, which opened in Novato in 2003. The charter for CAT was granted by the San Francisco Unified School District in September 2003 and will expire in August 2006.

Curriculum: Art is used to engage students to achieve academic excellence and self-expression. The school's hallmark is a personalized curriculum that integrates rigorous academics, art, and creativity with intellect, technology, and a sense of service to the community. Recruitment efforts seek students from diverse ethnic, socioeconomic, academic, cultural, and geographical backgrounds. CAT received 270 applications for the 110 available spots in 2004–05, their first year of instructional operations.

Project Description: Envision Schools is seeking a location south of Market Street and east of Castro Street in San Francisco for CAT's permanent school facility. CAT is currently housed in leased facilities on the campus of St. Emydius School, located just off Ocean Avenue between San Francisco City College and San Francisco State. CAT expects to complete the project in time for the 2007 08 school year, and intends to ultimately serve 440 students in grades nine through twelve.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Jacoby Creek Charter District

Project School:	Jacoby Creek Charter District
Project Location:	Old Arcata Road, Bayside
Chartering Entity:	California Department of Education
Total Project Cost:	$1,362,964
Grant Amount:	$681,482
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$41,837
First Year of Occupancy of New Project:	2006–07

Organizational Information: Jacoby Creek Charter District (Jacoby Creek) is a site-based, tuition-free kindergarten through eighth grade school that converted from a regular public school to a charter school in 2002. The charter school is located in the unincorporated village of Bayside and is adjacent to the city of Arcata located on California's northern coast, 300 miles north of San Francisco. This charter school is unique in that it is a single-school charter district, which was approved by the CDE in June 2002. Fifty percent of the students attending Jacoby Creek are from outside the district boundaries. CDE staff is currently reviewing Jacoby Creek's charter as its current charter is up for renewal in May 2005. CDE staff has conveyed that, based upon their due diligence to date, Jacoby Creek's charter renewal is likely to be recommended for approval by the State Superintendent of Public Instruction and the State Board of Education at the March board meetings.

Curriculum: Jacoby Creek's mission is to provide a structured, safe and supportive atmosphere, a high quality program of academic instruction that meets the needs of all students and equips them with the skills necessary for success in the homes, workplaces, and communities of today and tomorrow. Jacoby Creek also strives to develop the qualities of good character, self-discipline, and responsible citizenship in its students. Jacoby Creek encourages students to pursue excellence and embrace new challenges without fear of failure. Finally, Jacoby Creek nurtures and encourages each student's respect of self and the needs and rights of others.

Project Description: Jacoby Creek intends to build a new facility with six new classrooms (and two new bathrooms) with program funding. The new facility will allow Jacoby Creek's junior high students to move out of substandard portables and into a new permanent facility. The district is currently working with the David Pierce Architect Firm to develop a conceptual design of the proposed new classrooms. In its third year of operations (2004–05), student enrollment is 416.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

KIPP Academy Fresno

Project School:	KIPP Academy Fresno
Project Location:	East Church Street, Fresno
Chartering Entity:	Fresno Unified School District
Total Project Cost:	$4,156,628
Grant Amount:	$2,078,314
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$127,591
First Year of Occupancy of New Project:	2006–07

Organizational Information: KIPP Academy Fresno's (KAF's) founding partnership is with the KIPP Foundation and its state affiliate, KIPP California, which holds the charter for this school. Designed for middle school students, KIPP, which stands for Knowledge is Power Program, is based around a core set of operating principles, known as the Five Pillars: 1) high expectations; 2) choice and commitment; 3) more time; 4) power to lead; and 5) focus on results. The key components of the school's program are summed up in KIPP's motto, "There are no shortcuts"—words that apply to administration, faculty, students, and parents alike.

Curriculum: Following the national KIPP model, students spend more "time on task" devoting nine hours every weekday, plus alternate Saturdays throughout the extended school year. Summer school is three weeks in class. The school correlates its curriculum objectives to state standards and works to ensure that all students master all areas of the contents standards. KAF will complete its first year of teaching in June 2005; there are currently 60 students enrolled in the fifth grade. The waiting list is small, with only five students at this time.

Project Description: KAF is planning to build a middle school in Fresno on a 1.75 acre lot and construct a prefabricated modular school building with 22,000 square feet and 12 classrooms. The facility also will include science and computer labs and a library. According to KAF, the southwest area of Fresno Unified School district does not have a comprehensive public middle school (although a selective magnet school exists). The school district is bussing 750 students to other area middle schools. In conjunction with this application, KAF has received a commitment from the KIPP Foundation to guarantee up to $50,000 in annual lease payments

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Los Angeles Leadership Academy

Project School:	Los Angeles Leadership Academy
Project Location:	Near the USC Campus
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$18,166,664
Grant Amount:	$9,083,332
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$557,640
First Year of Occupancy of New Project:	2010

Organizational Information: Los Angeles Leadership Academy (Leadership Academy), a nonprofit public-benefit corporation, is a charter school with the mission of creating college-bound, public sector leaders from low-income communities in Los Angeles. To achieve a multiethnic student population, Leadership Academy focuses recruitment on the neighborhood immediately surrounding the facility and on a neighborhood three to five miles south of the school. In addition, Leadership Academy takes steps to ensure that its recruitment efforts reach students who may slip through the cracks by widely distributing brochures and taking referrals from local homeless shelters and the foster-care system. Leadership Academy had a waiting list of 387 potential students. The charter was granted in March 2002 (expires in March 2007).

Curriculum: Leadership Academy's curriculum is built around the theme of social justice with an integrated program of leadership development and academic study. The middle school program focuses on three core subjects—math/science, reading and writing workshop, and social studies/community action. The high school program organizes students' work into content-oriented courses and project centers that develop specific sets of applied skills. An important civic development outcome will be that students understand principles of justice, independence and social equality. To understand these principles, students must encounter them in varied ways through integration of the curriculum, materials, and instructional activities.

Project Description: Leadership Academy is seeking a permanent site near the campus of the University of Southern California (as the school is in partnership with USC's Rossier School of Education) to accommodate the school's projected enrollment growth. The school commenced instructional operations in 2002–03 and currently serves 262 students in grades six through nine, with a waiting list of 387 potential students. The school is projected to serve 455 students in grades six through twelve by 2008–09. Total enrollment is expected to grow to 910 students in 2009–10. The new facility is expected to be complete for 2009–10.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Maria Montessori Charter Academy

Project School:	Maria Montessori Charter Academy
Project Location:	Rocklin
Chartering Entity:	Twin Ridges Elementary School District
Total Project Cost:	$5,560,948
Grant Amount:	$2,780,474
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$170,698
First Year of Occupancy of New Project:	2006–07

Organizational Information: Maria Montessori Charter Academy (MMCA) is considered a district-operated charter school; it is not independently incorporated. The sponsoring school district, Twin Ridges Elementary School District, has set up a nonprofit organization as part of its oversight of all of its schools and the MMCA governing board has established a nonprofit with a mission to promote educational innovation within the public school system. MMCA received its original charter in February 2000 and opened in the Fall of 2000 (expires in November 2007). There are only two other charter schools based in Placer County (one of which MMCA has a working partnership with) and no other site-based Montessori programs in the county.

Curriculum: MMCA integrates Montessori methodologies within the framework of state standards. The school curriculum emphasizes individualized work plans, small ability-based groups for language arts and math, multi-age classrooms, low student-teacher ratios, manipulative-based learning materials and an overall emphasis on developing the "whole child".

Project Description: MMCA is planning to build a facility in Rocklin to accommodate kindergarten through grade eight. At full capacity, the school will serve 270 students, primarily in the elementary grades. The new facility will be based on the same floor plan as the Rocklin Unified School District (Rocklin USD) and the charter school plans to use the same architect firm as Rocklin USD uses for its construction projects. MMCA expects to complete the project in time for the 2006–07 school year.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Oakland School for the Arts

Project School:	Oakland School for the Arts
Project Location:	Downtown Oakland
Chartering Entity:	Oakland Unified School District
Total Project Cost:	$9,967,844
Grant Amount:	$4,983,922
Lump Sum Contribution:	$4,983,922
Source of Contribution:	City of Oakland Community and Economic Development Agency
Estimated Annual CSFP Lease Payment:	N/A
First Year of Occupancy of New Project:	2007–08

Organizational Information: Oakland School for the Arts (OSA) is a new charter high school spearheaded by Jerry Brown, former Governor of California and current mayor of the City of Oakland. OSA received its initial charter from the Oakland Unified School District (OUSD) in May 2000, and received federal tax-exemption status in October 2001. The school's charter was renewed by OUSD in December 2004 for a further five-year period.

Curriculum: OSA cites its unique status as an arts high school, its central location, its arts education staff, and support from local government as sources of competitive advantage over area schools. Instruction commenced in September 2002 with 100 students at the Alice Arts Center, a temporary facility located in downtown Oakland. Due to space constraints at the Alice Arts Center, OSA moved to a larger temporary site near the Fox Theatre location in 2004 05. A permanent facility is proposed for development at the historic Fox Theatre. The charter school has expanded and approximately 300 students are enrolled in 2004–05. OSA expects to increase enrollment to 500 students by 2007 08, the first year of project occupancy.

Project Description: The project will provide OSA with a state-of-the-art facility for arts education and help to address overcrowding issues currently facing OUSD. If allowed by special legislation, OSA intends to purchase and renovate the Fox Theatre property located at 1815 Telegraph Avenue in downtown Oakland. Should the legislation not pass, OSA indicated the project will be constructed at an approvable location. This project is the result of collaboration between OSA, the City of Oakland, OUSD, and the Paramount Theatre. OSA will purchase and occupy the property, a three-floor structure with an auditorium on the first floor.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Port of Los Angeles High School

Project School:	Port of Los Angeles High School
Project Location:	San Pedro
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$16,335,234
Grant Amount:	$8,167,617
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$501,423
First Year of Occupancy of New Project:	2005–06

Organizational Information: The Port of Los Angeles High School (POLAHS), formerly known as the Harbor International Business Academy, is a nonprofit, public benefit corporation formed in March 2001. The charter was awarded by the LAUSD in February 2003 (expires in June 2008) with instruction anticipated to commence in September 2005.

Curriculum: POLAHS will provide a college preparatory core academic curriculum with optional specialization in business, maritime education, labor, international trade, transportation, commerce and foreign language. According to the applicant, the charter school will have a competitive advantage over other local district high schools and private/parochial schools in the area because of its unique program design and premiere maritime location. The close proximity to the port and waterfront allows the integration of the curriculum with the surrounding environment.

Project Description: POLAHS intends to purchase and renovate property with an existing structure at the Port of Los Angeles located in San Pedro. The 3.85 acre site includes a two-story 70,000 sq. ft. building, which will ultimately house thirty-six classrooms, four large multimedia classrooms, a multipurpose room with a kitchen, four large physical education spaces, library, multimedia center, learning laboratories, offices, and four teacher work/conference rooms. Government institutions and a common outdoor eating area and public plaza also will occupy the site. It is anticipated that POLAHS will help alleviate the severe overcrowding of Los Angeles Unified School District schools with an enrollment of 250 ninth graders the first year, and a new class of 250 students added each of the next three years, reaching total enrollment of 1,000 students.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Temecula Preparatory School

Project School:	Temecula Preparatory School
Project Location:	French Valley Permanent Charter Site
Chartering Entity:	Temecula Valley Unified School District
Total Project Cost:	$4,669,180
Grant Amount:	$2,334,590
Lump Sum Contribution:	$2,334,590
Source of Contribution:	Temecula Valley Unified School District
Estimated Annual CSFP Lease Payment:	N/A
First Year of Occupancy of New Project:	2005-06

Organizational Information: Temecula Preparatory School (TPS) is a nonprofit corporation that has operated a site-based charter school since September 2000. TPS was created to provide educational options and choices to the communities of Temecula Valley and Winchester. According to TPS, it has an advantage because of its smaller campus where students receive more individual attention. Also, many parents prefer keeping their children at one campus for kindergarten through grade 12. The current charter was approved on December 7, 2002 (expires December 7, 2007).

Curriculum: TPS endeavors to educate children to become successful, knowledgeable, productive and independent members of a free society, stressing solid preparation in the fundamental academic skills of phonics, reading, writing and computation. The curriculum is modeled after courses from Hillsdale Academy, which is nationally recognized and has a rich historical tradition in classical education. TPS currently serves approximately 416 students, primarily from Temecula, Murrieta and the surrounding areas. Nearly fifty different languages are spoken in the homes of TPS' students, with Spanish being the dominant language.

Project Description: TPS is constructing a new school facility on the corner of Washington and Thompson in the city of Winchester in Riverside County. The site has been purchased and TPS, along with Temecula Valley Charter School and a traditional public high school, will be built on the site. The three schools will occupy portables at the new site, while permanent facilities are constructed. TPS has projected additional enrollment, especially for grades nine to twelve, to reach total enrollment of 550 students by 2008–09. The preliminary site plan for the project provides classroom space for 780 students. Currently, the school reports enrollment of 416 students, with 94 prospective students on the waiting list.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Temecula Valley Charter School

Project School:	Temecula Valley Charter School
Project Location:	French Valley Permanent Charter Site
Chartering Entity:	Temecula Valley Unified School District
Total Project Cost:	$4,057,738
Grant Amount:	$2,028,869
Lump Sum Contribution:	$2,028,869
Source of Contribution:	Temecula Valley Unified School District
Estimated Annual CSFP Lease Payment:	N/A
First Year of Occupancy of New Project:	2005-06

Organizational Information: Temecula Valley Charter School (TVCS) was originally opened in 1994, and until 2001, the charter school was part of the school district. TVCS applied for its nonprofit status in mid 2004, though independent financial audits have been done since 2001–02. There is one other charter school in the neighborhood, Temecula Preparatory School. TVCS reports that the two charter schools coexist quite well, partly due to the growing student population in the area and due to the differences between the schools. The preparatory school, TVCS reports, is a more back-to-basics school, while TVCS attracts parents who want a more parent-involved and group approach to education. In 2004, the charter school was awarded renewal of its charter for five years, through 2009.

Curriculum: The school serves students from kindergarten (full day) through eighth grade and aims to work with families who have a strong desire to participate in their children's education. While keeping to the district's curriculum, the school uses a multi-grade approach for some learning activities. Parent involvement is encouraged and promoted; in fact, the school includes a "Friday Rotation Program" with elective classes taught by parents and other experts (under the supervision of a credentialed teacher) with hands-on experiences in science, drama, and other opportunities. The school's curriculum also focuses on the use of technology as it is used in the 21st Century. Student assessments include writing samples, portfolios and video recordings.

Project Description: TVCS plans to build a kindergarten through eighth grade facility on district owned land, at the corner of Washington and Thompson in the city of Winchester in Riverside County. The site is called the "French Valley Permanent Charter Site." which will eventually be the home to two charter schools (TVCS and Temecula Preparatory School) and a traditional public high school. The new TVCS school building will allow for a total enrollment of 285 students, with 12 classrooms. While the permanent facility is being constructed, the charter school will occupy portables at the site. Current enrollment for 2004–05 is 225 students.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Today's Fresh Start Charter School

Project School:	Today's Fresh Start Charter School
Project Location:	Compton
Chartering Entity:	Los Angeles County Office of Education
Total Project Cost:	$12,605,650
Grant Amount:	$6,302,825
Lump Sum Contribution:	$0
Estimated Annual CSFP Lease Payment:	$386,940
First Year of Occupancy of New Project:	2006–07

Organizational Information: Today's Fresh Start Charter School (Today's Fresh Start) is a nonprofit, public benefit corporation that currently operates a site-based charter school in Los Angeles County. The school received its charter from the Los Angeles County Office of Education in September 2003, and the charter expires in September 2005.

Curriculum: Today's Fresh Start addresses the unique educational needs of an increasing at risk school-aged population. Students have a rigorous, hands-on, comprehensive and performance-based learning environment. This curriculum, reinforced with enriched studies and visual and performing arts, forms a bridge for disadvantaged students to achieve academic excellence. The charter school notes that many children in the geographic area are educationally disadvantaged and are attending under performing schools, causing them to be at risk of failing and not succeeding in the skills of lifelong learning. Today's Fresh Start provides an educational alternative, with qualified teachers and a diverse learning environment.

Project Description: Today's Fresh Start, currently located on South Crenshaw Boulevard in Los Angeles, is planning to open an additional site next fall in Compton. The Compton project will serve approximately 350 students in kindergarten through sixth grade. The South Crenshaw campus, which currently has 407 students enrolled in kindergarten through fourth grade, will increase to fifth grade next year, and projects a total enrollment of 507 students.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

University High School

Project School:	University High School
Project Location:	Campus of Fresno State University
Chartering Entity:	Sierra Unified School District
Total Project Cost:	$11,603,850
Grant Amount:	$5,801,925
Lump Sum Contribution:	$700,000
Source of Contribution:	Proceeds From Sale of Current Facilities
Estimated Annual CSFP Lease Payment:	$313,215
First Year of Occupancy of New Project:	2006–07

Organizational Information: University High School (University) is a nonprofit, public-benefit corporation. The high school, located on the Fresno State University campus and within the boundaries of the Fresno Unified School District, received its first charter from the Sierra Unified School District (Fresno County) on June 11, 1999, which was renewed in 2003 and is scheduled to expire on June 30, 2008. Student successes in academic competitions, science fairs, writer's conferences and also student performances in music ensembles, and dramatic and musical theater has brought University to the notice of potential students and their families.

Curriculum: Potential students are required to demonstrate a proficiency in music and mathematics prior to admission. During their high school years, students attend college courses at Fresno State University, and can graduate from high school with up to two years of college credit. Additionally, formal instruction in music and participation in musical performance is required each year.

Project Description: University seeks to construct a permanent facility close to the location of the school's existing modular and portable structures on the Fresno State University campus. University's tentative plan is to construct a new two-story high school facility at 2355 East Keats (currently an outdoor amphitheater area). Representatives of the charter high school and Fresno State University are currently negotiating the terms of a long-term lease for the land, with Fresno State maintaining ownership. The Fresno State Planning Committee and State Chancellor's Office have tentatively approved the location, as well as a rough schematic design. The project is expected to be completed for the 2006–07 school year. In 2004–05, 376 students are enrolled in grades nine through twelve. University projects a total student enrollment of 390 students for this project.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Vaughn Next Century Learning Center (New Elementary)

Project School:	Vaughn Elementary Language Academy
Project Location:	Herrick Avenue, Pacoima
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$11,344,418
Grant Amount:	$5,672,209
Lump Sum Contribution:	$2,836,105
Source of Contribution:	Vaughn Next Century Learning Center
Estimated Annual CSFP Lease Payment:	$174,113
First Year of Occupancy of New Project:	2008–09

Organizational Information: Vaughn Next Century Learning Center (Vaughn) began instruction in 1980 as a public school in the northern part of Los Angeles and in 1993 converted to a public charter school. Calling itself "The Little School That Could," Vaughn has worked to push school reform. Significant capital improvements have been made to better serve students, such as the addition of teaching stations and classrooms, which allowed Vaughn to extend its school year, eliminate its multi-track schedule, and reduce its class size to 20 students in all grades. In 2004, Vaughn built a new facility to house pre-school, kindergarten, and first grade students. The Los Angeles County Office of Education (LACOE) recognizes Vaughn as a California nonprofit public-benefit corporation pursuant to the EC. Vaughn has successfully renewed its charter twice—once in July 1998 and most recently in July 2003 (expires in 2008).

Curriculum: Vaughn's curriculum is focused on turning education into career opportunities through its pre-kindergarten through twelfth grade education model. The language development classes at the primary center, Panda Land, prepare students in kindergarten and first grade for school readiness. The academic foundation classes at the current elementary school, Panda Pavilion, and the planned 400 student elementary language school will provide students in grades two through five with academic preparation. The middle school, Panda Village, strengthens academic performance for adolescent transition.

Project Description (Elementary School): Vaughn will construct an accelerated English elementary magnet school designed to meet the needs of students who have not been successful in transitioning into academic English. The property for this new school is located within two blocks of Vaughn's primary center, elementary school, middle school, and the future high school. Currently, more than 1,400 students are enrolled in kindergarten through eighth grade. The new facility will allow Vaughn to expand its capacity by 400 students for grades two through five. Vaughn expects to complete the project in time for the 2008–09 school year.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

Vaughn Next Century Learning Center (High School)

Project School:	Vaughn High School Academy
Project Location:	Herrick Avenue, Pacoima
Chartering Entity:	Los Angeles Unified School District
Total Project Cost:	$19,689,644
Grant Amount:	$9,844,822
Lump Sum Contribution:	$4,922,411
Source of Contribution:	Vaughn Next Century Learning Center
Estimated Annual CSFP Lease Payment:	$302,194
First Year of Occupancy of New Project:	2006–07

Organizational Information: Vaughn Next Century Learning Center (Vaughn) began instruction in 1980 as a public school in the northern part of Los Angeles and in 1993 converted to a public charter school. Vaughn calls itself "The Little School That Could." Since its conversion to a charter school, Vaughn has worked to push school reform. The LACOE recognizes Vaughn as a California nonprofit public-benefit corporation pursuant to the EC. Vaughn has successfully renewed its charter twice—once in July 1998 and most recently in July 2003 (expires in 2008).

Curriculum: Vaughn's curriculum is focused on turning education into career opportunities through its pre-kindergarten through twelfth grade education model. The middle school strengthens academic performance for adolescent transition. The college preparation classes at the new Vaughn High School Academy will add international studies as a specialty program.

Project Description: Vaughn plans to construct a small, 500-student high school on its property located at 11475 Herrick Avenue, Pacoima, which is located across the street from Vaughn's middle school and within two blocks of Vaughn's primary center, elementary school, and future elementary language academy. Vaughn expects to complete the project in time for the 2006–07 school year. Currently serving 1,447 students, Vaughn expects to serve almost 2,000 students in kindergarten through 12th grade by the 2008–09 academic year.

Summary of Financially Sound Determination: The information requested and received by CSFA was reviewed and evaluated for the purpose of a preliminary determination of whether the Applicant is financially sound, pursuant to state law and CSFP regulations, for the sole purpose of CSFP's preliminary apportionment. Based upon staff analysis of the Applicant and program criteria, the Applicant appears to be financially sound for the purposes of this preliminary apportionment.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 22, 2005

STATE RELOCATABLE CLASSROOM PROGRAM

PURPOSE OF REPORT

The purpose of this report is to provide the State Allocation Board (Board) with:

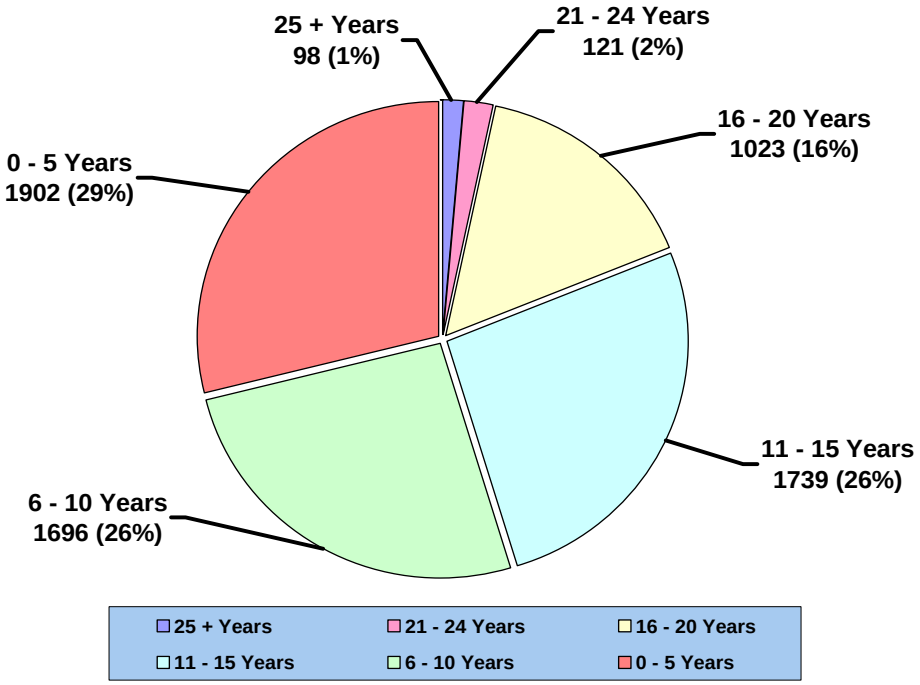
1. An overview of the State Relocatable Classroom Program (Program).
2. The general condition of the State Relocatable Classroom (Relocatable) assets.
3. Options for the implementation of an Asset Management Plan (Plan) (Rehabilitation/Disposal).
4. An option for the immediate disposal of all Relocatables 20 years of age and older.
5. A proposal to increase the annual lease payments of a Relocatable.

OVERVIEW

At the Program's inception in 1978, the inventory consisted of less than 100 relocatables designed to assist school districts in times of emergency situations. In fact, the Program was originally entitled the "Emergency Portable Program". Over the years, the Program has evolved into a long-term leasing program which accommodates district student housing needs far beyond the emergency nature of its initial inception. Today, the Board owns 6,579 Relocatables that are leased to school districts. The majority of these classrooms are leased at a rate of $4,000 per year. There are some school districts within the Program that qualify for financial hardship and subsequently lease their Relocatable at a reduced rate. Thus the average annual lease rate is $3,648 per Relocatable, which generates lease payment revenue of approximately $24 million annually. Since 1991, the Board has not increased the lease payments for the Relocatables.

Of the 6,579 Relocatables owned by the Board, the majority of classrooms (5,337) are 15 years of age or less. There are 249 Relocatables that are at least 20 years of age that represent the most potential cost and liability for the State. As this report will show, the cost to maintain a Relocatable substantially increases as it ages.

Percentage of State Relocatable Classroom Buildings by Age



(Continued on Page Two)

OVERVIEW (cont.)

Under the Lease-Purchase Program, the State passed three bond measures between 1990 and 1996 that generated $62 million for the specific purpose of purchasing relocatable classrooms and covering Program operating costs such as transporting Relocatables from one school district to another school district, reimbursing school districts for the cost to set up the Relocatable, and the administrative costs associated with managing the Program.

Over the last ten years, seven times the annual State budget control language has directed the lease payment revenue generated from the Program to be directed to the State's General Fund. During the three years the Program was able to retain these funds, the Board purchased additional Relocatables and was able to sustain the program. However, the last time the Program was able to retain the lease payment revenue was in Fiscal Year 2001-02. Since that time, funds have significantly diminished and are inadequate to sustain the Program and address the growing issues associated with an aging fleet.

These issues have precipitated the need to develop an Asset Management Plan and examine the feasibility of increasing the lease payments on the Relocatables.

AUTHORITY

Education Code (EC) Section 17089 permits the Board to lease a Relocatable to school districts for not less than one dollar per year, and no more than $4,000 per year. The Program currently leases Relocatables to school districts for an annual fee of $4,000. However, the Board has the authority to annually increase the lease payment on Relocatables according to the adjustment for inflation set forth in the statewide cost index for classroom construction as determined by the Board at its January meeting, pursuant to EC Section 17089(a).

EC Section 17089(b) authorizes the Board to require each lessee to undertake all necessary maintenance, repairs, renewal and replacement to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

EC Section 17089(c) states that for the purposes of this section, "good repair" has the same meaning as specified in subdivision (d) of Section 17002.

EC Section 17002(d) states that "good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction (OPSC). The instrument shall not require capital enhancements beyond the standards to which the facility was designed and constructed.

EC Section 17094 permits the Board to dispose of a relocatable classroom to the public or private entity in any manner that it deems to be in the best interest of the State, if the Board deems there is no longer a need for the relocatable classroom.

2004 Budget Act - Section 24.30 permits the Controller, upon order of the Director of Finance, to transfer rental income received in the 2004-05 fiscal year, pursuant to Section 17089 of the EC, from the State School Building Aid Fund to the State's General Fund.

(Continued on Page Three)

AUTHORITY (cont.)

2005 Budget Act – Section 24.30 (PENDING) permits the Controller, upon order of the Director of Finance, to transfer rental income received in the 2005-06 fiscal year pursuant to Section 17089 of the EC, in an amount as determined by the Department of Finance, from the State School Building Aid Fund to the State's General Fund. Further, the OPSC is authorized to expend revenues in the State School Building Aid Fund per EC Section 17088(f) in an amount as specified by the Department of Finance.

EC Section 17089.2 permits school districts or county superintendent of schools to purchase any relocatable classroom that was leased from the Board prior to December 1, 1991, for an amount equal to the purchase price paid by the Board, including costs for site preparation, furniture and equipment, toilet facilities and transportation of classrooms, less the amount of any lease payment already paid to the Board by the district or county superintendent of schools for that classroom. Payment for purchases made pursuant to this section shall be in equal annual installments for an agreed upon term not to exceed nine years.

State Allocation Board Policy states that the purchase cost to the district shall be called the "net purchase cost" and equal to the purchase price paid by the Board, less rental payments by that district for the relocatable classroom. In no case shall the purchase cost to the district be less than $4,000.

GENERAL CONDITION OF THE FLEET

In order to determine the general condition of the fleet, Staff conducted an inventory survey that requested information from participating school districts regarding the general condition of the Relocatables currently being leased. Staff inquired about the interior, exterior and mechanical conditions of the Relocatables. Of the 304 school districts currently participating in the Program, Staff received 192 responses (63 percent). Of those school districts that responded to the survey, 73 percent of the respondents rated their Relocatables either in good or excellent condition, which represents the majority of classrooms less than 15 years of age. Staff analyzed the remaining 27 percent of the respondents that rated their Relocatables in either fair or poor condition and found that those classrooms were older than 15 years of age. In addition, it has been determined that these classrooms have been transferred from one school district to another a number of times throughout the years, which has contributed to the overall deterioration of the classroom.

Currently, school districts are required to keep the Relocatables in a well maintained condition and bear the costs for the maintenance. Costs vary from each school district, depending on the adoption of a routine maintenance schedule, the age of the classroom, the frequency of moves, location and environment. In recent years, more and more school districts have expressed concern to the OPSC about the rising costs to repair the more expensive building components, such as HVAC systems, roofs, exterior siding, etc. that have exceeded their useful life expectancy. In fact, the repairs necessary to keep a Relocatable in good working order have gone beyond general maintenance needs and have become capital improvement needs. Thus, school districts are asking the State for assistance to replace the major building components and they do not feel that it is their responsibility to pay for these components.

(Continued on Page Four)

ASSET MANAGEMENT PLAN

To present a comprehensive report to the Board, Staff met with other State agencies and members from the relocatable manufacturing industry and collected information regarding the major costs and factors that should be considered when developing a Plan. Those factors include useful life expectancy data, major building component rehabilitation costs, relocatable classroom replacement value, and disposal costs.

Useful Life Expectancy

Useful life expectancy is defined as the probable life span of a particular object. For the purposes of this report, Staff will be using the useful life expectancy data provided by members of the relocatable manufacturing industry and individual component manufacturers. It was necessary for Staff to determine the useful life expectancy of each component in order to determine the cost to maintain a Relocatable. The first thing to keep in mind in evaluating useful life expectancy data is the fact that the useful life expectancy of a component is dependent on the level of care and maintenance provided over the years and the location and environment of the Relocatable. As an example, the useful life expectancy for components of a classroom that is located on the coast will vary from components located in a desert region due to the climate conditions.

The useful life expectancy data used for this report takes into consideration that components have received regular maintenance on a routine basis. The majority of components within a Relocatable have a useful life expectancy that range between ten and twenty years of age. In other words, when a component has reached its useful life expectancy, that component is likely to have deteriorated and require replacement. As classrooms continue to age, it is expected that certain components will have reached their useful life expectancy more than once and again require replacement, which will result in additional costs.

Major Building Component Rehabilitation Costs

The rehabilitation costs proposed in this section address the major building components that have exceeded their useful life expectancy and considers that school districts have applied the proper maintenance and repair to the classrooms as prescribed in EC Section 17089 (b). In a typical landlord/lessee relationship, the landlord bears the responsibility to repair or replace the major components. As an example, the replacement of carpet is typically not the responsibility of the lessee unless the damage to the carpet is beyond normal “wear and tear” and determined to be caused by the negligence of the lessee. Anything beyond the cost to keep the facility in a well maintained condition is the responsibility of the landlord. As landlord of the State’s assets, it may be more appropriate that the rehabilitation cost for the major components be borne by the State.

Staff examined the key components that make up a relocatable classroom. These components include such things as; Exterior Siding, Trim and Skirting; Roof; Door and Windows; HVAC; Ramp; Wallboard and Related Items; Ceiling and Electrical Fixtures; and, Flooring. Using cost estimating data from Lee Saylor Base Cost Estimate (2005 edition) and R.S. Means Cost Estimate (2005 edition), and useful life expectancy data from the relocatable manufacturing industry, Staff calculated the estimated cost to rehabilitate a Relocatable over a period of time (See Chart A). In finalizing the cost estimates, Staff made further adjustments to account for additional rehabilitation work that may be necessary to adjacent areas, such as dry rot or damage caused by a leaking roof.

(Continued on Page Five)

ASSET MANAGEMENT PLAN (cont.)

Major Building Component Rehabilitation Costs (cont.)

CUMULATIVE COST TO REHABILITATE A SINGLE RELOCATABLE

CHART A		AGE OF RELOCATABLE			
		10 Years	15 Years	20 Years	25 Years
	Cost to Rehabilitate	$17,214	$26,791	$52,229	$67,481

As mentioned earlier, the majority of Relocatable components have a useful life expectancy that range between 10 and 20 years. As the classrooms continue to age, certain rehabilitation costs are duplicated, thus resulting in additional overall costs in subsequent years. For example, if the State were to rehabilitate a Relocatable over a period of 20 years, the State would incur costs for carpet twice over a period of 20 years, since the useful life expectancy for carpet is 10 years.

Relocatable Classroom Replacement Value

Using the latest building specifications, which were used for the Board's 2002 Relocatable building contract, members from the relocatable manufacturing industry estimated that the cost to purchase the same relocatable classroom today would increase approximately ten percent from the 2002 purchase price. Thus, the estimated replacement value of a Relocatable would be $28,000 or more depending on available material costs. Factoring in additional costs for transportation and set-up, the cost to the State to replace a Relocatable could be $40,000 or more.

Under the School Facility Program (SFP), school districts can establish modernization eligibility when their relocatable classroom has reached 20 years of age. However, it is not cost effective to use modernization funds to rehabilitate an older relocatable when the costs to replace a relocatable classroom are comparable. In fact, by using their modernization funds to purchase a new relocatable, the new facility would meet the requirements under Title 24 and address some of the issues related to air quality and noise pollution. School districts typically exercise the option to replace district owned relocatable classrooms when faced with the decision of how to use their modernization funding. The Board may want to consider implementing a similar cost effective practice.

Currently, the Board owns 249 Relocatables that are over 20 years of age. Recognizing that the cost to replace a Relocatable is virtually the same cost to rehabilitate one, it may be prudent for the Board to develop a plan that includes the disposal of Relocatables that incorporates a cost benefit analysis.

Relocatable Classroom Disposal

After evaluating the rehabilitation costs and useful life expectancy data, it was necessary for Staff to research the cost to dispose of a Relocatable. The average cost to dispose of a Relocatable could range from $6,000 to $7,000 per classroom.

As an alternative to incurring the additional expense to dispose of a Relocatable, the Board can sell the classrooms to school districts, other public agencies, or private entities. EC Section 17094 permits the Board to dispose of any relocatable classroom, in any manner that it deems to be in the best interest of the State, if the Board deems there is no longer a need for a relocatable classroom. Additionally, EC Section 17089.2 permits

(Continued on Page Six)

ASSET MANAGEMENT PLAN (cont.)

Relocatable Classroom Disposal (cont.)

the Board to sell a Relocatable that was leased from the Board prior to December 1, 1991, for an amount equal to the purchase price paid by the Board, including the cost of site preparation, furniture and equipment, toilet facilities and transportation of classrooms, less any lease payments received for that classroom. The purchase price would include costs associated with improvements made to the Relocatable. The revenue generated from the sale of Relocatables could be used to cover the cost to dispose of some classrooms, as it is anticipated that not every school district, public agency or private entity will purchase all of the Relocatables.

Currently, there are 61 school districts, representing 1,357 Relocatables that have continually leased their classroom since December 1, 1991 and have not elected to purchase the State's relocatable classroom. The OPSC is aware of school districts that have not elected to purchase the State's relocatable classroom due to the high costs associated with adjusting their SFP baseline eligibility. A typical elementary grade level classroom loaded at 25 pupils will generate a base allowance of $169,225 in new construction funding. Districts will not risk the loss of future new construction funding.

Staff determined that the best return on investment for a Relocatable requires the State to dispose of the classrooms at 15 years of age. An analysis of the rehabilitation costs compared to the lease payment revenue generated produces a 57 percent return on investment when Relocatables are disposed of at 15 years of age. Should the State dispose of Relocatables at 20 years of age, the return on investment only yields a 26 percent return on investment.

Based on the information mentioned previously, Staff has developed three options for the Plan, which do not contemplate the purchase of any new Relocatables.

OPTION #1 – REHABILITATION PROGRAM

One of the objectives for implementing a Plan is to allow for more effective planning in relation to the maintenance and repair of a Relocatable. As previously mentioned, the Program requires a school district to maintain the Relocatable throughout the duration of the lease, pursuant to EC Section 17089 (b) and (c). However, as these classrooms continue to age, the OPSC has received complaints from school districts that the repairs necessary to keep a Relocatable in good working order have gone beyond general maintenance needs and have become capital improvement needs.

Using property management principles, the landlord is responsible for the repair or replacement of the major components that contribute to the functionality of a facility. The State is responsible for the major component costs of the Relocatable, unless it is determined that the school district was negligent in providing the proper care and maintenance resulting in the replacement of a component before that component has reached its useful life expectancy. Requiring a school district to replace building components that have outlived their usefulness is inconsistent with normal property management principals and might be unfair to school districts. Therefore, Staff has developed a proactive program that is designed to extend the useful life of a Relocatable while preserving the State's assets.

In order to adopt a Rehabilitation program, it would be necessary to develop a grant program that would provide funds, generated from the lease revenue, to reimburse school districts for rehabilitation costs for key

(Continued on Page Seven)

ASSET MANAGEMENT PLAN (cont.)

OPTION #1 – REHABILITATION PROGRAM (cont.)

components when those components have reached their useful life. These components would be placed on a schedule and Staff would coordinate with school districts to ensure the key components are rehabilitated. Staff would accomplish this through an education program that would instruct school districts on the proper care and maintenance.

The figures in Chart B represent the cost to rehabilitate three proposed groups of Relocatables. The data illustrates the estimated rehabilitation costs for the major building components if the Board does not elect to adopt a disposal plan, adopt a disposal plan at 20 years and 15 years of age, which account for a graduated schedule for the disposal of Relocatables. Based on the figures below, it is clear that the rehabilitation costs and associated general liabilities to the State are far less if the Board adopts a disposal plan when the classrooms reach 15 years of age, than if the State were not to adopt a disposal plan.

CUMULATIVE COST TO REHABILITATE THE FLEET OVER A PERIOD OF 20 YEARS

CHART B		YEAR 2005	YEAR 2015	YEAR 2020	YEAR 2025	Total
	No Disposal Plan (6,579 classrooms)	$76,183,776	$114,566,706	$177,573,789	$231,679,485	$600,003,756
	Disposal at 20 Years (6,330 classrooms)	$65,920,545	$58,302,072	$38,894,031	$0	$163,116,648
	Disposal at 15 Years (4,869 classrooms)	$26,486,694	$25,093,574	$0	$0	$51,580,268

In determining the overall costs to the State, it is necessary to also factor in the operating costs for the Program. The costs associated with operating this Program do not include the purchase of new Relocatables and include transportation costs to move a Relocatable from one school district to another, administrative costs to manage the Program, and reimbursable allowances for costs associated with setting up the Relocatable. The chart below illustrates the financial shortfall when calculating the rehabilitation costs and the operating costs and comparing those costs to the lease payment revenue generated.

NET PROFIT / LOSS FOR THE PROGRAM OVER A PERIOD OF 20 YEARS

CHART C		COST TO REHABILITATE RELOCATABLES	COST TO OPERATE THE PROGRAM*	REVENUE GENERATED ***	PROFIT / LOSS
	No Disposal Plan (6,579 classrooms)	$600,003,756	$419,890,135	$480,003,840	$(539,890,051)
	Disposal at 20 Years (6,330 classrooms)	$163,116,648	$269,845,305	$221,338,752	$(211,623,201)
	Disposal at 15 Years** (4,869 classrooms)	$51,580,268	$104,373,832	$119,650,752	$(36,303,348)

* The cost to operate the program represents only those costs for transportation, reimbursable allowances, and administrative costs and excludes the initial purchase costs. This Option does not anticipate the purchase of new Relocatables.

**The costs represented under "Disposal at 15 Years" are calculated over a period of 15 years and are not carried forward over 20 years.

*** Revenue generated is based on an average lease payment rate of $3,648 annually.

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ASSET MANAGEMENT PLAN (cont.)

OPTION #1 – REHABILITATION PROGRAM (cont.)

Chart E illustrates the lease payment rate necessary to sustain the Program under Option #1, while adjusting for a graduated schedule for the disposal of the Relocatables. If the Board elects to retain the Relocatables and not adopt a disposal plan, the State may increase its exposure for rehabilitation costs and general liabilities as a result of using Relocatables that have exceeded their useful life expectancy.

The SFP regulations require an adjustment to a school district's baseline eligibility when facilities are added to the inventory. Staff is proposing that school districts that wish to purchase a Relocatable not be required to adjust their SFP baseline eligibility. The purpose of this proposal is to reduce the State's liability due to an aging fleet and provide an incentive to those school districts currently participating in the Program. Further, the existing Relocatables are not comparable to newer relocatable classrooms and the existing Relocatables can not continue to meet the long-term needs for the school districts. To ensure that school districts can purchase a Relocatable without an adjustment to their baseline eligibility, legislative and/or regulatory remedies would need to be enacted to ensure this proposal.

To summarize Option #1:

- Proposes a Rehabilitation Program that provides school districts with the funds to rehabilitate the eight key components of a Relocatable.
- Outlines three disposal plans; no disposal, disposal at 20 years and 15 years of age.
- Requires a lease payment increase to cover the operating and rehabilitation costs identified in this proposal.
- Permits school districts to purchase a Relocatable without impacting their baseline eligibility.

OPTION #2 – PROGRAM PHASE-OUT WITHOUT REHABILITATION

This option requires the State to develop policy and procedures that allows for the phasing out of the Program by disposing of classrooms when they have met a predetermined age. Under this proposal, school districts will still be required to maintain the condition of the classroom. However, when a Relocatable reaches a predetermined age, the Board would have the option to dispose of the classroom.

In determining the appropriate age in which to dispose of a Relocatable under this option, Staff analyzed the useful life expectancy data and determined that 15 years of age would adequately limit the amount of future liability the State would incur, if the State were to retain the classroom beyond 15 years of age. Staff anticipates that under this option, all relocatable classrooms will be completely phased out by the year 2018 or sooner.

Staff determined that the best return on investment for a Relocatable requires the State to dispose of the classrooms at 15 years of age. An analysis of the rehabilitation costs compared to the lease payment revenue generated produces a 57 percent return on investment when Relocatables are disposed of at 15 years of age. Should the State dispose of Relocatables at 20 years of age, the return on investment only yields a 26 percent return on investment.

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ASSET MANAGEMENT PLAN (cont.)

OPTION #2 – PROGRAM PHASE-OUT (cont.)

TOTAL COST TO OPERATE THE PROGRAM VERSUS THE LEASE PAYMENT REVENUE

CHART D		COST TO OPERATE THE PROGRAM*	REVENUE GENERATED***	PROFIT / LOSS
	No Disposal Plan (6,579 classrooms)	$419,890,135	$480,003,840	$60,113,705
	Disposal at 20 Years (6,330 classrooms)	$269,845,305	$221,338,752	$(48,506,563)
	Disposal at 15 Years** (4,869 classrooms)	$104,373,832	$119,650,752	$15,276,920

*
The cost to operate the program represents only those costs for transportation, reimbursable allowances, and administrative costs and excludes the initial purchase costs. This Option does not anticipate the purchase of new Relocatables.

**The costs represented under "Disposal at 15 Years" are calculated over a period of 15 years and are not carried forward over 20 years.

*** Revenue generated is based on an average lease payment rate of $3,648 annually.

Chart E illustrates the lease payment rate necessary to sustain the Program under Option #2, while adjusting for a graduated schedule for the disposal of the Relocatables. If the Board elects to retain the Relocatables and not adopt a disposal plan, the State may increase its exposure to general liabilities as a result of using Relocatables that have exceeded their useful life expectancy.

Currently, regulations require an adjustment to a school district's SFP baseline eligibility when facilities are added to the inventory. Staff is proposing that school districts that wish to purchase a Relocatable will not be required to adjust their SFP baseline eligibility. To ensure that school districts can purchase a Relocatable without an adjustment to their SFP baseline eligibility, legislative and/or regulatory remedies would need to be enacted to ensure this proposal.

To summarize Option #2:

- Requires school districts to continue providing for the general maintenance of the Relocatable.
- Outlines three disposal plans; no disposal, disposal at 20 years and 15 years of age.
- Requires a lease payment increase to cover the operating costs for this proposal.
- Permits school districts to purchase a Relocatable without impacting their SFP baseline eligibility.

OPTION #3 - IMMEDIATE SALE OF THE PROGRAM FLEET

This option requires the State to develop policy and procedures that allows for the immediate sale of all Relocatables owned by the Board. Under this proposal, the Board would authorize the sale of 6,579 Relocatables to school districts, other public agencies or interested private entities up to an amount equal to the purchase price paid by the Board, including all purchase costs absorbed by the State, pursuant to EC Section 17089.2.

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ASSET MANAGEMENT PLAN (cont.)

OPTION #3 - IMMEDIATE SALE OF THE PROGRAM FLEET (cont.)

This proposal is supported by two main factors that have developed in recent years. First, the relocatable manufacturing industry has grown and provides school districts with options beyond the State's Program at competitive prices throughout the State. Secondarily, the funds necessary to adequately manage the Program have substantially diminished. It may be prudent for the Board to sell the Relocatables to avoid any future general liabilities and recover costs previously expended on the Program. The funds generated from the immediate sale could be directed to augment various programs administered by the Board, or reduce the debt service on the bonds. Staff would need to come back to present various disposal options of the fleet under this Option.

Currently, regulations require an adjustment to a school district's SFP baseline eligibility when facilities are added to the inventory. However, Staff is proposing that school districts that elect to purchase a Relocatable would be permitted to do so and the school district's SFP baseline eligibility would not be adjusted to reflect an increase in classroom capacity. To ensure that school districts can purchase a Relocatable without an adjustment to their SFP baseline eligibility, legislative and/or regulatory remedies would need to be enacted.

To summarize Option #3;

- Disposes of Relocatables immediately and offer Relocatables at fair market value, pursuant to EC Section 17089.2.
- Permits school districts to purchase a Relocatable without impacting their SFP baseline eligibility.

LEASE PAYMENT INCREASE PROPOSAL

The Board, in the past, has designated funds through various bond measures to fund the Program. These bonds generated $62 million that permitted the OPSC to purchase new relocatable classrooms, cover transportation costs and administrative costs associated with managing the Program. The funds generated from the bond measures have diminished. Without retention of the Program's revenue, it will be necessary for the Board to increase its lease payment rates as shown below in Chart E in order to implement Option #1 or #2. However, pursuant to EC Section 17089, the SAB is limited to an increase in the annual lease payment to a maximum of $6,364 for Fiscal Year 2005-06 based on the annual adjustments for inflation set forth in the statewide cost index for classroom construction since 1991.

VARIOUS LEASE PAYMENT RATE INCREASE OPTIONS

CHART E

	OPTION #1 (Rehabilitation)	OPTION #2 (Phase-Out)
Disposal at 20 Years	$9,500	$8,175
Disposal at 15 Years	$9,450	$8,720

(Continued on Page Eleven)

STAFF COMMENTS

It may no longer be cost beneficial for the State to remain in this business, because there is now a private portable classroom manufacturing and leasing industry operating throughout California that is able to support the demand for relocatable classrooms at a comparable price. For example, private industry is charging approximately $6,500 per classroom annually, which includes furniture and equipment, transportation, set-up and maintenance costs. The original intent of the Program, to provide housing in emergency situations, remains meritorious. However, this purpose has long since been superseded by the Program's evolution into a long-term lease program. If the Board elects to phase-out of the Program, the Board may address emergencies, such as natural disasters, through the SFP.

Given the comparable lease rates available through private industry, the costs of a comprehensive rehabilitation program exceed the benefits because the State would, in the next ten years, be faced with the additional costs of replacing major building components. The private industry leases include a maintenance/rehabilitation program. The portables provided through the private industry would better meet the current requirements under Title 24 and address some of the issues related to air quality and noise pollution that are associated with the State's older Relocatables.

The Board's existing policy regarding purchasing portable classrooms appears to be appropriate for establishing the fair market value that school districts will be required to pay for Relocatables. Under current statute, school districts are required to pay the initial purchase price of the building, delivery and installation costs, utility connection costs, furniture and equipment costs, architect fees, inspection and Division of the State Architect fees, less lease payment revenues collected for each Relocatable. The Board's policy has been that the purchase cost to the district shall not be less than $4,000.

The State's Annual Budget control language has authorized the transfer of the lease payment revenue generated by the Program to the State's General Fund. The last time the Program was able to retain the lease payment revenue was in Fiscal Year 2001-02. The Program currently lacks sufficient funding to cover the cost of moves requested by school districts and storage of excess Relocatable inventory. The demand for the State's relocatable classrooms has diminished due to the availability of new construction General Obligation Bonds and the expansion of the private portable classroom manufacturing/leasing industry.

Current lease payment revenues are insufficient to cover the costs associated with operating the Program and rehabilitating the aging relocatable fleet. The State's Relocatables have been leased at a rate of $4,000 per year since 1991. To support a rehabilitation program (Option #1) without retention of the Program's revenue, the lease payment rates would be $9,500 with a disposal plan for all buildings at 20 years of age and $9,450 with a disposal plan for all buildings at 15 years of age. To support a phase-out program (Option #2) without retention of the Program's revenue, the lease payment rates required would be $8,175 with a disposal plan for all buildings at 20 years of age and $8,720 with a disposal plan for all buildings at 15 years of age. However, pursuant to EC Section 17089, the SAB is limited to an increase in the annual lease payment to a maximum of $6,364 for Fiscal Year 2005-06 based on the annual adjustments for inflation set forth in the statewide cost index for classroom construction since 1991. To minimize the financial burden on the school districts, Staff is proposing that the Board increase its lease payment rate by $1,000 beginning with the 2005-06 Fiscal Year, with the balance of the increase occurring in the following fiscal year. Based on the districts with the highest number of State Relocatables, the highest increase to any one school district would be $206,000.

(Continued on Page Twelve)

STAFF COMMENTS (cont.)

Provided that all lease payment revenues are strictly dedicated to supporting the Program operation costs, there is no change required to the current lease payment to support a phase-out program, without a rehabilitation program, and a disposal plan for all buildings at 15 years of age. However, a phased approach for the State to withdraw from the long-term leasing of relocatable classroom business needs to be developed that minimizes the fiscal impact on school districts. As mentioned previously, Staff is proposing to change existing regulations to allow school districts to purchase all Relocatables over 15 years of age without a charge to their SFP baseline eligibility. This proposal offers several benefits to both parties. The State will be able to maximize its return on the investment in Relocatables and minimize its exposure in terms of rehabilitation costs, disposal costs, and general liability issues associated with using Relocatables that have exceeded their useful life expectancy. School districts, on the other hand, will receive the benefits of purchasing classrooms and an exemption from the SFP baseline eligibility adjustment that would have otherwise been charged.

RECOMMENDATIONS

1. Approve Option #2 with a disposal plan at 15 years and instruct the OPSC to implement the Phase-Out Program.

2. Direct Staff to present regulations at a future Board for the implementation of Option #2, as specified.

3. Approve the immediate disposal of all relocatable classrooms older than 20 year of age.

4. Require that all lease payment revenues be made available to support the Program.

5. If the Board does not approve Recommendation No. 4, increase the lease payment rate for the Program from $4,000 to $5,000 beginning with the 2005-06 Fiscal Year. Approve the balance of the lease payment rate increase for the 2006-07 Fiscal Year.

6. Authorize the encumbrance of approximately $5 million for relocation expenses, set up costs and other related expenses.

BOARD ACTION

In considering this Item, the State Allocation Board on June 22, 2005 postponed this Item until the July SAB meeting. The Board requested Staff to prepare a report to include:

1. Research the transfer of the current year's Relocatable proceeds to the General Fund, including review of the tape from the Budget and Fiscal Review Subcommittee No. 1 on Education.

2. History of the authorization for transferring Relocatable funds to the General Fund.

3. A resolution declaring the Board's desire to retain Relocatable proceeds for the Program's needs.

4. Input from interested parties regarding the options proposed by Staff including the non-dischargeability of Relocatable buildings to ensure equity.

5. Information about the maintenance work performed by school districts in order to ensure Relocatables are maintained in good repair.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 22, 2005

RESIDUAL MODERNIZATION GRANTS

PURPOSE OF REPORT

To present an update regarding the use of residual modernization grants at school sites other than the site that generated the modernization eligibility.

DESCRIPTION

At the May 3, 2005 State Allocation Board (SAB) meeting, in response to the Board's request, Staff presented a report discussing the possible use of residual modernization grants on school sites that had not generated the eligibility (see Attachment). The term "residual" was defined as the remaining unused per-pupil grant eligibility remaining on a school's modernization eligibility baseline after a modernization project was completed. The Board accepted the report, but requested that the issue be discussed further by the SAB Implementation Committee.

STAFF COMMENTS

The SAB Implementation Committee was presented with the report, and briefly reviewed the issues and concerns identified. The concerns varied from not supporting moving the residual modernization grants to other sites to allowing the grants to be transferred to allow greater flexibility in meeting facility needs. Committee members expressed concern about discussing the issues before the currently proposed legislation (Assembly Bill 1300) had been passed. The Committee concluded that it would be more appropriate to first allow the legislative process to address any residual modernization grants issues and, if necessary, bring back the item for discussion after the legislative process has been completed.

RECOMMENDATION

Accept this report.

In considering this item, the State Allocation Board on June 22, 2005 accepted the report.

ATTACHMENT

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, May 3, 2005

RESIDUAL MODERNIZATION GRANTS

PURPOSE OF REPORT

To present a report to the State Allocation Board (SAB) regarding the utilization of residual modernization grants on school sites other than the site that generated the modernization eligibility.

BACKGROUND

At the February 2005 SAB meeting, the Board requested information regarding remaining modernization grants that were not utilized by the school district for its modernization project and the viability for a district to use these residual grants at other school sites that did not generate the eligibility.

AUTHORITY

Education Code Section 17074.25 states, "A modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of, *the school* (emphasis added)."

SFP Regulation, Section1859.79.2 cites that modernization funding, with the exception of savings, is limited to expenditures on the specific site where the modernization grant eligibility was generated.

SFP Regulation Section 1859.103 states that a district may expend the savings not needed for a project on other high priority capital facility needs of the district. For non-financial hardship districts, SFP Regulation Section 1859.103 further states that the State's share of any savings from a modernization project may be used as a District matching share requirement only on another modernization project.

DESCRIPTION

The SAB, through the SFP, provides modernization funding on a site specific basis for districts with schools that qualify for modernization. To qualify, permanent buildings must be at least 25 years old and portables at least 20 years old. The eligibility is generated on a per building basis.

As a result of the following dynamics, various school districts have residual or additional modernization grants in their modernization baseline:

- Additional buildings on the site become of age (25 and 20 years) after the date when the original modernization baseline was established.
- Buildings that were previously modernized 25 years ago for permanent classrooms or 20 years ago for portable classrooms (i.e., under the Lease-Purchase Program) again become eligible for modernization funds.
- Increased enrollment at the site.
- School districts periodically complete modernization projects without utilizing all of the available modernization eligibility (pupil grants) generated for that site.
- The need to comply with the "60 percent commensurate" requirement, which will occasionally necessitate a reduction in the number of pupils used, to bring the ratio of actual construction work within 60 percent of the project budget. The regulations require school districts to maximize modernization grants by assuring that 60 percent of the grants being requested are being fully utilized for construction costs at the site which generated the grants. Early in the program, the Board was concerned that school districts were generating a substantial amount of savings, which were then being spent on other capital projects and were not being spent on the site that generated the grants.

(Continued on Page Two)

DESCRIPTION (cont.)

While a district may believe that they cannot move forward with a project because the amount of residual modernization pupil grants is minimal or because they believe the modernization work has been completed, a district has the ability of receiving additional modernization pupil grants, as described above. If the modernization eligibility was transferred to another site and the need arose to modernize a building at the original site, the district would not have any eligibility to modernize these facilities.

STAFF COMMENTS

A fundamental tenet at the conception of the SFP was that modernization eligibility generated at a specific site represented the actual need at that site. There was an emphasis when the program and regulations were developed that the modernization funds be spent at the site for which the eligibility was generated. It would be inequitable to use modernization grants generated at one site on another site, as buildings that generated the modernization eligibility will not qualify for modernization again for another 20 to 25 years. To allow the transfer of modernization grants from one site to another may benefit some schools while being detrimental to the useful life of the schools where the eligibility was established. In some cases, the schools receiving the "transferred" grants may be in effect receiving a duplication of SFP funds if that campus has already received its maximum modernization eligibility.

It has been claimed that districts have not utilized residual modernization eligibility in their baseline because the eligibility is not enough to move forward with a project. Staff has researched the number of projects that have been submitted to the Office of Public School Construction with less than 200 pupils, and have found that numerous small size projects have been submitted for funding since the inception of the SFP. The findings are as follows:

	Number of Projects	Range of Apportionments
Projects with 100 Pupils or Less*	353	$2,722 to $1,158,296
Projects with 101 – 200 Pupils	472	$147,772 to $1,979,746

* Smallest Project Funded was for One Pupil Grant (State Apportionment $2,722)

There are provisions in the regulations that recognize a small project under 101 pupil grants. These regulations provide an additional small project allowance to address the economy of scale costs for a project based on a small number of pupil grants.

RECOMMENDATION

Accept this report.

BOARD ACTION

This report was accepted by the State Allocation Board on May 3, 2005, with a request that the issue be discussed further by the SAB Implementation Committee.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 22, 2005

SCHOOL FACILITIES NEEDS ASSESSMENT GRANT PROGRAM PROGRESS REPORT

PURPOSE OF REPORT

To provide a report to the Governor and Legislature regarding the progress made by Local Educational Agencies (LEA) toward completing a one-time, comprehensive assessment of school facilities.

BACKGROUND

Senate Bill 6 (Chapter 899, Statutes of 2004, Alpert) was signed into law on September 29, 2004 and is one of five bills created as part of the settlement agreement in the case of *Williams v. State of California*. Senate Bill 6 established the School Facilities Needs Assessment Grant Program (SFNAGP) and provides $25 million for eligible school districts to perform a one-time assessment of school facility needs. This report has been prepared by the Office of Public School Construction, on behalf of the State Allocation Board, in compliance with Education Code Section 17592.73 to provide the Governor and Legislature with information on the progress made by Local Educational Agencies (LEAs) in completing the assessments of all eligible schools. This report contains an explanation of implementation process for the program and responses from LEAs on the progress thus far in completing their needs assessments.

RECOMMENDATION

Accept the School Facilities Needs Assessment Progress Report and authorize the Executive Officer to provide copies of the report to the Governor and Legislature.

Report on the Progress of the School Facility Needs Assessments Required by the Williams Settlement

School Facilities Needs Assessment Grant Program

Report to the Governor and Legislature

June 2005

Prepared for the Governor and the Legislature by the

State Allocation Board

and the

Office of Public School Construction

Office of Public School Construction

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Preface

Introduction

Chapter 899, Statutes of 2004, (Senate Bill (SB) 6 Alpert) was signed into law on September 29, 2004, and is one of five bills created as part of the settlement agreement in the case of Williams v. State of California. SB 6 established two programs: the School Facilities Needs Assessment Grant Program (SFNAGP) and the Emergency Repair Program (ERP). SB 6 provided $25 million for Local Educational Agencies (LEA) to perform a one-time assessment of school facility needs at eligible school sites. An additional $5 million was allocated for the Emergency Repair Program (ERP), which provides reimbursement to LEAs for the cost of emergency repairs at eligible school sites. There will be $800 million available for emergency repairs over the lifetime of the ERP.

This report has been prepared by the Office of Public School Construction (OPSC), on behalf of the State Allocation Board (SAB), in compliance with Education Code (EC) Section 17592.73 to provide the Governor and Legislature with information on the progress made by LEAs in completing the assessment of all eligible schools. This report contains an explanation of the implementation process for the Program and responses from LEAs on progress thus far in completing their needs assessments.

About the State Allocation Board/Office of Public School Construction

State Allocation Board

The SAB is primarily responsible for determining the allocation of State resources (proceeds from General Obligation Board Issues and other designated State funds) used for the new construction and modernization of local public school facilities. The SAB is also charged with the responsibility for the administration of the School Facility Program, the State Relocatable Classroom Program, the Deferred Maintenance Program, and, with the passage of SB 6, the SFNAGP and ERP. The SAB is the policy level body for the programs administered by the OPSC.

The SAB is comprised of the Director of Finance (traditional chair), the Director of the Department of General Services, the Superintendent of Public Instruction, three members of the Senate, three members of the Assembly, and one appointee by the Governor.

Members

- **Mr. Tom Campbell**, Director, Department of Finance
- **Mr. Ron Joseph**, Director, Department of General Services
- **Mr. Jack O'Connell**, State Superintendent of Public Instruction, Department of Education
- **Senator Bob Margett**
- **Senator Alan Lowenthal**
- **Senator Jack Scott**
- **Assembly Member Jackie Goldberg**
- **Assembly Member Lynn Daucher**
- **Assembly Member Joe Coto**
- **Ms. Rosario Girard**, Governor Appointee

Office of Public School Construction

The OPSC, as staff to the SAB, implements and administers the SFNAGP and other programs of the SAB. The OPSC is charged with the responsibility of verifying that all applicant LEAs meet specific criteria based on the type of funding request. The OPSC also prepares recommendations for the SAB's review and approval.

It is also incumbent on the OPSC staff to prepare regulations, policies, and procedures, which carry out the mandates of the SAB, and to work with LEAs to assist them throughout the application process. The OPSC is also responsible for ensuring that funds are disbursed properly and in accordance with the decisions made by the SAB.

Staff

- **Ms. Luisa M. Park**, Executive Officer, State Allocation Board/Office of Public School Construction
- **Ms. Mavonne Garrity**, Assistant Executive Officer, State Allocation Board
- **Ms. Lori Morgan**, Deputy Executive Officer, Office of Public School Construction

Summary of the Program

The SFNAGP requires that LEAs complete a one-time, comprehensive assessment of the needs of the facilities used by the pupils and staff at eligible school sites. Eligible schools are those identified by the California Department of Education (CDE) as ranked in deciles 1 though 3, inclusive, of the 2003 Academic Performance Index (API) and were newly constructed prior to January 1, 2000. Funding to develop this assessment is provided for each eligible school in the amount of $10 per pupil, based on the 2003 California Basic Educational Data System (CBEDS) enrollment report, with a minimum of $7,500 per school.

LEAs must obtain the services of a qualified individual to perform the assessment. At minimum, the assessment must consist of the components set forth by the SAB, which are based on the requirements specified in EC Section 17592.70. The assessment is required to be completed and submitted to the OPSC by January 1, 2006. To assist both the OPSC and LEAs, an on-line submittal program has been developed to transmit eligibility and facility data information.

Part 1: Program Implementation

SAB and OPSC Process

The implementation of SB 6 for the OPSC began in early September 2004. The process included the presentation of working papers and proposed regulations to the SAB Implementation Committee. The SAB Implementation Committee is an informal advisory body established by the SAB to assist the Board and the OPSC with policy and legislation implementation (committee membership is comprised of organizations representing the school facilities community). The proposed policy was presented at four separate public committee meetings. With valuable input from the plaintiffs, committee members, architects, and other interested parties, a consensus was reached and a Program was established that meets the intent of the legislation. The results of the Program will be a valuable tool in understanding the facility needs of California schools.

On January 26, 2005, and February 23, 2005, the SAB adopted the proposed regulations and authorized the Executive Officer to file the regulations with the Office of Administrative Law (OAL) on an emergency basis.

Statewide Outreach

After the successful implementation process, the focus quickly changed to spreading the word throughout the State of the requirements of this Program.

The OPSC, in conjunction with CDE, conducted a series of Statewide workshops on the facility pieces of the Williams Settlement in Santa Clara, Sacramento, Los Angeles, Fresno, San Bernardino, San Diego, Costa Mesa, and Redding to inform both LEAs and potential inspectors about the new program. Attendees at the workshops received information about the eligibility requirements, funding availability, requirements of the assessment, and a demonstration of the on-line system developed to capture the information gathered in the assessment, in addition to information about other Williams programs. Participation and attendance at all locations was good and the overall message was well received by the attendees. Average attendance at the workshops was 51.

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Part 2: School Facility Needs Assessment Grant Program Requirements and Funding

Eligibility and Application Process

Eligible schools are those identified by the CDE as ranked in deciles 1 through 3, inclusive, of the 2003 API that were newly constructed prior to January 1, 2000. The CDE published a list of 2,208 schools, including 75 charter schools, that met the API criteria. Charter schools were given the option to participate in the Williams programs and, in the end, only six charter schools chose to do so. The final list of schools meeting the API criteria dropped to 2,139 schools representing 388 LEAs. (Refer to Appendix 1 and 2 for the list of LEAs and charter schools).

The OPSC was unable to determine how many of the schools met the second criteria of being newly constructed prior to January 1, 2000, because a Statewide database does not exist that contains the original date of construction of each school. Therefore, on February 23, 2005, the SAB apportioned funds to all schools meeting the API criteria. Prior to release of funds, LEAs had to submit a worksheet to the OPSC to determine whether or not each of the decile 1 through 3 schools under their jurisdiction was newly constructed prior to January 1, 2000. Schools newly constructed on or after that date are ineligible and any funds apportioned for an ineligible school will not be released. This process allowed the OPSC to quickly release funds and be assured funds are being provided only to eligible schools.

This eligibility criteria applies to the ERP as well. As a result, the schools that are required to have a needs assessment will also be eligible for ERP funding. Due to the fact that an emergency situation may arise prior to or after the completion of the assessment, the repair does not need to have been identified on the assessment in order to qualify for ERP funding. Similarly, the assessment need not be completed prior to applying for ERP funding.

Assessment Requirements

SB 6 required that the needs assessment contain specific information. The data will be provided to the OPSC via the On-Line School Facilities Needs Assessment Submittal Program. Pursuant to statute, the assessment will contain the following information:

- Year of construction of each building used for instructional purposes;
- Year of modernization of each building used for instructional purposes;
- Pupil capacity of the school;
- Enrollment;
- Density of the school campus (pupils/acre);
- Total number of classrooms;
- Age and number of portable classrooms;
- Multi-track, year-round schedule;
- Type of facility used for pupil eating;
- Useful life remaining of all major building systems for each structure;
- Estimated costs for five years to maintain a healthy, safe, suitable, and functional learning environment; and
- List of necessary repairs – if an LEA has identified a health and safety project in this section, the repair may be eligible for reimbursement under the ERP.

The law required the SAB to develop regulations to administer the SFNAGP, including specifying the qualifications of the personnel performing the needs assessment and a method to ensure their independence. Of the six sections for the needs assessment, three may only be completed by an independent inspector that meets the qualifications outlined in the regulations adopted by the SAB. Only a qualified inspector may provide the following data:

- Useful life remaining of all major building systems for each structure;
- Estimated costs for five years to maintain a healthy, safe, suitable, and functional learning environment; and
- List of necessary repairs

Submittal Timelines

The needs assessment must be completed and submitted to the OPSC by January 1, 2006, using the on-line program. Any funds not used to perform the assessment may be expended to complete necessary repairs, as reported in the assessment, at the eligible schools sites. LEAs have until January 1, 2007, to expend any of the remaining funds on necessary repairs.

Summary of Apportionments

Funding to perform the assessment has been provided for each school identified by CDE as meeting the API criteria in the amount of $10 per pupil, based on the 2003 CBEDS enrollment report, with a minimum of $7,500 per school.

A total of $22,829,500 was apportioned by the SAB from the $25 million allocated for the SFNAGP. The remaining funds shall be transferred to the ERP Account pursuant to EC Section 41207.5. The following charts provide information on the distribution of funds:

ENROLLMENT	NUMBER OF SCHOOLS	ALLOCATION
Less than 750	1,089	$ 8,167,500
751 to 2,500	939	$10,997,000
2,500 or Greater	111	$ 3,665,000
TOTAL	2,139	$22,829,500

GRADE LEVELS	NUMBER OF SCHOOLS	ALLOCATION
Elementary (K–6)	1,490	$12,677,020
Middle (7–8)	348	$ 4,305,230
High (9–12)	301	$ 5,847,250
TOTAL	2,139	$22,829,500

As of May 9, 2005, 344 of 388 LEAs have submitted a certification of eligibility. The results of those submittals indicates that out of the total 2,139 school sites:

- 1,995 have been deemed eligible based on the date of construction;
- 88 have yet to be determined eligible; and
- 56 have been deemed ineligible because the date of construction of the school occurred on or after January 1, 2000.

The 56 school sites that have been deemed ineligible represents $507,860 that will be rescinded at a later date.

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Part 3: Summary of the Progress Made in Completing Needs Assessments

In order to respond to the request in statute, an on-line progress report survey was developed by the OPSC. LEAs were to respond to four statements and complete one survey for all eligible schools by April 29, 2005. The information provided in the progress reports is the basis of the information contained herein. Due to the tight timelines, significant progress was not anticipated. Out of the 388 LEAs apportioned needs assessment funding, seven LEAs did not need to submit a progress survey. After completing the Certification of Eligibility, the LEAs did not have any eligible school sites remaining to provide a progress report. The following chart summarizes the responses received by LEAs:

STATEWIDE SUMMARY OF PROGRESS REPORT RESPONSES	TOTAL	PERCENT
LEAs that submitted a progress report survey	379	—
LEAs that did not complete a progress report survey	2	—
Total number of eligible schools*†	2,081	—
Number of completed assessments	0	0
Number of schools with a designated inspector	1,174	56
Number of schools where an assessment has initiated	455	22

* This number includes school sites that have not been deemed ineligible because the LEA has not submitted the Certification of Eligibility.

† Not inclusive of the school sites under the jurisdiction of LEAs that did not complete a progress report survey.

Appendix 1 provides detailed information listing the responses from each LEA. Appendix 3 provides a listing of the LEAs that did not submit a progress survey to the OPSC as required by statute and regulation.

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Appendix 1: Detailed Listing of Survey Responses

Survey Statements LEAs Completed

The LEA's responded to the following statements:

- The required assessments have been completed and submitted to the OPSC for the following number of schools.
- The LEA has designated individual(s) to perform the assessment(s) for the following number of schools.
- Of the schools reported in Statement 2, the designated individual(s) began conducting the assessment(s) for the following number of schools.
- Provide an estimated date for the submittal of the completed assessment(s) for all the school under your jurisdiction.

The following information is an alphabetical listing of the survey responses to the above statements by county.

COUNTY	DISTRICT	TOTAL ELIGIBLE SCHOOL SITES	TOTAL APPORTIONMENT	RESPONSE 1	PERCENT SUBMITTED	RESPONSE 2	PERCENT WITH DESIGNATED INSPECTOR	RESPONSE 3	PERCENT ASSESSMENT BEGUN	RESPONSE 4
Alameda	Berkeley Unified	1	$ 7,500.00	0	0	0	0	0	0	05/31/05
Alameda	Emery Unified	2	15,000.00	0	0	2	100	2	100	06/30/05
Alameda	Fremont Unified	2	15,000.00	0	0	2	100	2	100	12/15/05
Alameda	Hayward Unified	20	195,780.00	0	0	20	100	20	100	12/31/05
Alameda	Oakland Unified	55	491,460.00	0	0	55	100	55	100	12/30/05
Alameda	San Leandro Unified	3	23,710.00	0	0	3	100	3	100	06/01/05
Alameda	San Lorenzo Unified	6	55,190.00	0	0	2	33	0	0	12/31/05
Amador	Amador County Office of Education	1	7,500.00	0	0	0	0	0	0	12/31/05
Butte	Bangor Union Elementary	1	7,500.00	0	0	1	100	0	0	08/31/05
Butte	Chico Unified	2	15,000.00	0	0	2	100	0	0	01/01/06
Butte	Oroville City Elementary	2	15,000.00	0	0	2	100	2	100	07/01/05
Butte	Thermalito Union	1	7,500.00	0	0	1	100	1	100	06/01/05
Butte	Pioneer Union Elementary	1	7,500.00	0	0	1	100	0	0	01/01/06
Colusa	Colusa Unified	1	7,500.00	0	0	0	0	0	0	09/01/05
Colusa	Pierce Joint Unified	1	15,000.00	0	0	1	100	1	100	10/01/05
Colusa	Williams Unified	1	7,500.00	0	0	0	0	0	0	06/30/05
Contra Costa	Contra Costa County Office of Education	1	7,500.00	0	0	0	0	0	0	06/01/05
Contra Costa	Antioch Unified	4	33,510.00	0	0	4	100	0	0	12/31/05
Contra Costa	John Swett Unified	1	15,000.00	0	0	1	100	1	100	10/31/05
Contra Costa	Liberty Union High	1	7,500.00	0	0	1	100	1	100	05/18/05

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Contra Costa	Mt. Diablo Unified	11	97,450.00	0	0	11	100	11	100	05/20/05
Contra Costa	Pittsburg Unified	7	76,500.00	0	0	7	100	7	100	12/31/05
Contra Costa	West Contra Costa Unified	32	288,430.00	0	0	32	100	0	0	12/31/05
Del Norte	Del Norte County Unified	1	7,500.00	0	0	1	100	1	100	08/31/05
El Dorado	Lake Tahoe Unified	1	7,500.00	0	0	1	100	0	0	08/30/05
Fresno	Fresno County Office of Education	1	7,500.00	0	0	1	100	0	0	12/01/05
Fresno	American Union Elementary	1	7,500.00	0	0	0	0	0	0	01/01/06
Fresno	Clovis Unified	1	7,500.00	0	0	1	100	1	100	06/01/05
Fresno	Coalinga/Huron Joint Unified	4	48,670.00	0	0	0	0	0	0	01/01/06
Fresno	Fowler Unified	1	7,500.00	0	0	1	100	1	100	10/15/05
Fresno	Fresno Unified	57	594,320.00	0	0	57	100	0	0	12/31/05
Fresno	West Fresno Elementary	2	15,000.00	0	0	2	100	2	100	12/01/05
Fresno	Kings Canyon Joint Unified	7	74,760.00	0	0	7	100	0	0	12/31/05
Fresno	Laton Joint Unified	1	7,500.00	0	0	0	0	0	0	01/01/06
Fresno	Orange Center	1	7,500.00	0	0	0	0	0	0	07/30/05
Fresno	Parlier Unified	5	38,340.00	0	0	5	100	0	0	12/31/05
Fresno	Raisin City Elementary	1	7,500.00	0	0	1	100	1	100	06/22/05
Fresno	Sanger Unified	6	46,260.00	0	0	0	0	0	0	12/31/05
Fresno	Selma Unified	5	37,520.00	0	0	5	100	0	0	12/15/05
Fresno	Washington Union High	1	11,030.00	0	0	0	0	0	0	10/01/05
Fresno	West Park Elementary	1	7,500.00	0	0	1	100	1	100	06/17/05
Fresno	Westside Elementary	1	7,500.00	0	0	0	0	0	0	01/01/06
Fresno	Firebaugh-Las Deltas Unified	4	30,000.00	0	0	4	100	0	0	12/31/05
Fresno	Central Unified	1	7,500.00	0	0	1	100	1	100	01/01/06
Fresno	Kerman Unified	2	18,000.00	0	0	2	100	2	100	12/31/05
Fresno	Mendota Unified	2	15,000.00	0	0	2	100	2	100	07/01/05
Fresno	Golden Plains Unified	4	30,630.00	0	0	0	0	0	0	01/01/06
Fresno	Riverdale Joint Unified	1	7,500.00	0	0	0	0	0	0	01/01/06
Fresno	Caruthers Unified	2	16,230.00	0	0	2	100	2	100	07/01/05
Glenn	Glenn County Office of Education	1	7,500.00	0	0	1	100	0	0	12/15/05
Humboldt	Klamath-Trinity Joint Unified	3	22,500.00	0	0	3	100	3	100	06/30/05
Humboldt	South Bay Union Elementary	1	7,500.00	0	0	1	100	1	100	05/5/05
Imperial	Imperial County Office of Education	1	7,500.00	0	0	0	0	0	0	12/30/05
Imperial	Brawley Union High	1	17,290.00	0	0	1	100	0	0	12/31/05
Imperial	Calexico Unified	9	89,380.00	0	0	0	0	0	0	12/01/05
Imperial	Calipatria Unified	1	7,500.00	0	0	1	100	1	100	05/31/05
Imperial	El Centro Elementary	4	30,580.00	0	0	0	0	0	0	01/01/06
Imperial	Heber Elementary	1	7,500.00	0	0	0	0	0	0	11/15/05
Imperial	Meadows Union Elementary	1	7,500.00	0	0	0	0	0	0	12/01/05
Imperial	San Pasqual Valley Unified	2	22,500.00	0	0	2	100	0	0	12/31/05

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Imperial	Westmorland Union Elementary	1	7,500.00	0	0	1	100	1	100	09/30/05
Inyo	Big Pine Unified	1	7,500.00	0	0	1	100	0	0	08/20/05
Inyo	Lone Pine Unified	1	7,500.00	0	0	1	100	1	100	06/30/05
Kern	Kern County Office of Education	1	7,500.00	0	0	0	0	0	0	12/30/05
Kern	Arvin Union Elementary	3	29,400.00	0	0	0	0	0	0	06/30/05
Kern	Bakersfield City Elementary	32	264,150.00	0	0	32	100	0	0	12/30/05
Kern	Buttonwillow Union Elementary	1	7,500.00	0	0	0	0	0	0	12/01/05
Kern	Delano Union Elementary	8	69,300.00	0	0	8	100	0	0	12/31/05
Kern	Delano Joint Union High	1	26,160.00	0	0	1	100	1	100	06/30/05
Kern	Di Giorgio Elementary	1	7,500.00	0	0	1	100	1	100	08/31/05
Kern	Edison Elementary	2	15,000.00	0	0	0	0	0	0	12/30/05
Kern	Fairfax Elementary	2	16,590.00	0	0	2	100	2	100	06/30/05
Kern	General Shafter Elementary	1	7,500.00	0	0	1	100	0	0	01/01/06
Kern	Greenfield Union	2	15,000.00	0	0	0	0	0	0	09/01/05
Kern	Kern High	10	200,080.00	0	0	0	0	0	0	11/15/05
Kern	Lamont Elementary	3	22,950.00	0	0	3	100	3	100	06/30/05
Kern	Richland	3	29,780.00	0	0	3	100	0	0	12/31/05
Kern	Lost Hills Union Elementary	2	15,000.00	0	0	2	100	2	100	07/01/05
Kern	Mojave Unified	4	30,740.00	0	0	3	75	3	75	05/28/05
Kern	Muroc Joint Unified	1	7,500.00	0	0	0	0	0	0	01/9/05
Kern	Pond Union Elementary	1	7,500.00	0	0	0	0	0	0	08/01/05
Kern	Semitropic Elementary	1	7,500.00	0	0	1	100	1	100	07/30/05
Kern	Standard Elementary	1	7,500.00	0	0	0	0	0	0	12/31/05
Kern	Taft City Elementary	3	22,500.00	0	0	0	0	0	0	12/15/05
Kern	Taft Union High	1	9,600.00	0	0	0	0	0	0	12/31/05
Kern	Vineland Elementary	2	15,000.00	0	0	0	0	0	0	07/15/05
Kern	Wasco Union Elementary	3	25,030.00	0	0	3	100	3	100	06/24/05
Kern	Wasco Union High	1	13,480.00	0	0	1	100	0	0	09/16/05
Kern	Mcfarland Unified	4	30,450.00	0	0	0	0	0	0	07/01/05
Kings	Kings County Office of Education	1	7,500.00	0	0	0	0	0	0	01/01/06
Kings	Armona Union Elementary	2	15,000.00	0	0	2	100	2	100	10/15/05
Kings	Central Union Elementary	1	7,500.00	0	0	0	0	0	0	09/01/05
Kings	Corcoran Joint Unified	4	31,400.00	0	0	4	100	3	75	10/15/05
Kings	Hanford Elementary	5	37,500.00	0	0	5	100	2	40	06/30/05
Kings	Hanford Joint Union High	2	34,800.00	0	0	2	100	0	0	08/31/05
Kings	Lakeside Union Elementary	1	7,500.00	0	0	1	100	1	100	10/15/05
Kings	Lemoore Union Elementary	1	7,500.00	0	0	1	100	1	100	10/15/05
Kings	Reef-Sunset Unified	4	37,500.00	0	0	4	100	0	0	12/01/05
Lake	Konocti Unified	6	46,150.00	0	0	6	100	0	0	05/30/05
Lake	Lucerne Elementary	1	7,500.00	0	0	1	100	0	0	08/15/05

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Lake	Middletown Unified	1	7,500.00	0	0	0	0	0	0	07/31/05
Lake	Upper Lake Union Elementary	1	7,500.00	0	0	1	100	1	100	06/30/05
Los Angeles	Abc Unified	6	55,560.00	0	0	6	100	6	100	12/30/05
Los Angeles	Antelope Valley Union High	3	91,750.00	0	0	0	0	0	0	08/15/05
Los Angeles	Azusa Unified	13	120,110.00	0	0	13	100	0	0	12/15/05
Los Angeles	Baldwin Park Unified	10	109,440.00	0	0	10	100	3	30	12/15/05
Los Angeles	Bassett Unified	3	30,510.00	0	0	3	100	3	100	12/15/05
Los Angeles	Bellflower Unified	2	40,220.00	0	0	0	0	0	0	10/01/05
Los Angeles	Bonita Unified	1	7,500.00	0	0	1	100	0	0	08/31/05
Los Angeles	Centinela Valley Union High	3	72,310.00	0	0	3	100	0	0	12/15/05
Los Angeles	Duarte Unified	2	15,000.00	0	0	0	0	0	0	09/30/05
Los Angeles	Eastside Union	3	32,690.00	0	0	3	100	0	0	11/01/05
Los Angeles	East Whittier City Elementary	2	15,000.00	0	0	2	100	0	0	11/30/05
Los Angeles	El Monte City	8	66,160.00	0	0	3	38	0	0	12/15/05
Los Angeles	El Monte Union High	3	53,400.00	0	0	3	100	0	0	12/15/05
Los Angeles	El Rancho Unified	6	48,340.00	0	0	6	100	0	0	09/01/05
Los Angeles	Garvey Elementary	1	7,500.00	0	0	1	100	0	0	12/15/05
Los Angeles	Hawthorne Elementary	5	43,430.00	0	0	5	100	0	0	12/15/05
Los Angeles	Inglewood Unified	8	95,380.00	0	0	8	100	8	100	08/24/05
Los Angeles	Keppel Union Elementary	4	30,000.00	0	0	4	100	0	0	08/31/05
Los Angeles	Lancaster Elementary	11	105,750.00	0	0	11	100	0	0	12/15/05
Los Angeles	Lawndale Elementary	5	50,300.00	0	0	5	100	5	100	10/31/05
Los Angeles	Lennox Elementary	5	63,280.00	0	0	5	100	0	0	09/30/05
Los Angeles	Little Lake City Elementary	1	7,500.00	0	0	0	0	0	0	12/01/05
Los Angeles	Long Beach Unified	16	248,760.00	0	0	16	100	0	0	12/31/05
Los Angeles	Los Angeles Unified	296	4,941,850.00	0	0	0	0	0	0	12/31/05
Los Angeles	Lynwood Unified	11	175,430.00	0	0	0	0	0	0	12/02/05
Los Angeles	Montebello Unified	19	271,040.00	0	0	1	5	1	5	09/01/05
Los Angeles	Mountain View Elementary	9	86,720.00	0	0	0	0	0	0	09/30/05
Los Angeles	Norwalk-La Mirada Unified	10	107,930.00	0	0	0	0	0	0	8/30/05
Los Angeles	Palmdale Elementary	17	185,540.00	0	0	17	100	0	0	10/31/05
Los Angeles	Paramount Unified	16	175,760.00	0	0	16	100	0	0	12/15/05
Los Angeles	Pasadena Unified	10	106,840.00	0	0	10	100	0	0	7/01/05
Los Angeles	Pomona Unified	24	279,530.00	0	0	24	100	0	0	12/30/05
Los Angeles	South Whittier Elementary	3	25,810.00	0	0	3	100	0	0	01/01/06
Los Angeles	Whittier City	5	37,500.00	0	0	4	80	4	80	09/10/05
Los Angeles	Whittier Union High	2	43,630.00	0	0	2	100	2	100	12/31/05
Los Angeles	Wilsona	1	7,500.00	0	0	0	0	0	0	06/30/05
Los Angeles	Compton Unified	33	335,410.00	0	0	33	100	0	0	12/15/05
Los Angeles	Hacienda La Puente Unified	12	110,660.00	0	0	0	0	0	0	08/31/05

COUNTY	DISTRICT	TOTAL ELIGIBLE SCHOOL SITES	TOTAL APPORTIONMENT	RESPONSE 1	PERCENT SUBMITTED	RESPONSE 2	PERCENT WITH DESIGNATED INSPECTOR	RESPONSE 3	PERCENT ASSESSMENT BEGUN	RESPONSE 4
Los Angeles	Rowland Unified	3	23,730.00	0	0	3	100	0	0	09/01/05
Madera	Chowchilla Elementary	3	22,500.00	0	0	3	100	3	100	10/15/05
Madera	Chowchilla Union High	1	8,700.00	0	0	1	100	0	0	12/31/05
Madera	Madera Unified	11	129,500.00	0	0	11	100	0	0	12/01/05
Marin	Marin County Office of Education	1	7,500.00	0	0	0	0	0	0	01/01/06
Marin	San Rafael City Elementary	2	15,000.00	0	0	0	0	0	0	09/01/05
Mendocino	Arena Union Elementary	1	7,500.00	0	0	1	100	0	0	07/01/05
Mendocino	Fort Bragg Unified	1	7,500.00	0	0	0	0	0	0	10/30/05
Mendocino	Point Arena Joint Union High	1	7,500.00	0	0	1	100	0	0	07/01/05
Mendocino	Round Valley Unified	1	7,500.00	0	0	0	0	0	0	01/01/06
Mendocino	Ukiah Unified	3	22,500.00	0	0	3	100	0	0	12/31/05
Mendocino	Willits Unified	1	7,500.00	0	0	0	0	0	0	06/16/05
Mendocino	Laytonville Unified	1	7,500.00	0	0	0	0	0	0	12/30/05
Merced	Merced County Office of Education	1	7,500.00	0	0	0	0	0	0	12/31/05
Merced	Atwater Elementary	3	22,500.00	0	0	0	0	0	0	12/31/05
Merced	El Nido Elementary	1	7,500.00	0	0	0	0	0	0	01/01/06
Merced	Le Grand Union Elementary	1	7,500.00	0	0	1	100	0	0	12/31/05
Merced	Le Grand Union High	1	7,500.00	0	0	1	100	0	0	12/31/05
Merced	Livingston Union	4	31,030.00	0	0	3	75	3	75	06/22/05
Merced	Los Banos Unified	5	65,180.00	0	0	0	0	0	0	01/01/06
Merced	Merced City Elementary	7	55,050.00	0	0	7	100	7	100	12/16/05
Merced	Planada Elementary	1	15,000.00	0	0	1	100	1	100	06/3/05
Merced	Weaver Union Elementary	1	9,420.00	0	0	0	0	0	0	11/30/05
Merced	Winton Elementary	3	22,500.00	0	0	3	100	0	0	11/30/05
Merced	Gustine Unified	1	15,000.00	0	0	0	0	0	0	12/15/05
Merced	Dos Palos Oro-Loma Joint Unified	4	30,000.00	0	0	4	100	0	0	12/31/05
Merced	Delhi Unified	4	32,680.00	0	0	4	100	0	0	07/29/05
Monterey	Monterey County Office of Education	1	7,940.00	0	0	0	0	0	0	12/21/05
Monterey	Alisal Union Elementary	8	77,070.00	0	0	8	100	0	0	12/31/05
Monterey	Chualar Union Elementary	1	7,500.00	0	0	1	100	0	0	12/31/05
Monterey	Greenfield Union Elementary	4	30,590.00	0	0	4	100	3	75	10/15/05
Monterey	King City Union Elementary	3	25,950.00	0	0	0	0	0	0	01/01/06
Monterey	King City Joint Union High	2	21,350.00	0	0	0	0	0	0	01/01/06
Monterey	Monterey Peninsula Unified	6	51,640.00	0	0	0	0	0	0	09/01/05
Monterey	Salinas City Elementary	8	64,320.00	0	0	0	0	0	0	07/01/05
Monterey	Salinas Union High	6	108,290.00	0	0	6	100	0	0	10/31/05
Monterey	Santa Rita Union Elementary	2	15,000.00	0	0	2	100	0	0	12/31/05
Monterey	North Monterey County Unified	2	15,000.00	0	0	2	100	2	100	05/27/05
Monterey	Soledad Unified	4	32,360.00	0	0	4	100	0	0	06/30/05
Monterey	Gonzales Unified	3	24,160.00	0	0	3	100	3	100	10/01/05

COUNTY	DISTRICT	TOTAL ELIGIBLE SCHOOL SITES	TOTAL APPORTIONMENT	RESPONSE 1	PERCENT SUBMITTED	RESPONSE 2	PERCENT WITH DESIGNATED INSPECTOR	RESPONSE 3	PERCENT ASSESSMENT BEGUN	RESPONSE 4
Napa	Calistoga Joint Unified	1	7,500.00	0	0	1	100	0	0	06/30/05
Napa	Napa Valley Unified	4	30,000.00	0	0	0	0	0	0	10/31/05
Orange	Orange County Office of Education	1	7,500.00	0	0	0	0	0	0	01/01/06
Orange	Anaheim City	17	176,380.00	0	0	17	100	17	100	12/31/05
Orange	Anaheim Union High	7	116,140.00	0	0	7	100	0	0	12/30/05
Orange	Buena Park Elementary	1	7,520.00	0	0	0	0	0	0	12/30/05
Orange	Capistrano Unified	2	22,500.00	0	0	2	100	2	100	06/01/05
Orange	Fullerton Elementary	6	50,850.00	0	0	0	0	0	0	12/30/05
Orange	Fullerton Joint Union High	1	19,630.00	0	0	1	100	0	0	12/15/05
Orange	Garden Grove Unified	5	39,060.00	0	0	5	100	5	100	12/31/05
Orange	Huntington Beach Union High	1	7,500.00	0	0	1	100	0	0	06/01/05
Orange	La Habra City Elementary	1	7,500.00	0	0	1	100	0	0	12/15/05
Orange	Magnolia Elementary	2	18,540.00	0	0	0	0	0	0	01/01/06
Orange	Newport-Mesa Unified	5	43,410.00	0	0	0	0	0	0	01/01/06
Orange	Ocean View Elementary	1	7,990.00	0	0	0	0	0	0	12/01/05
Orange	Orange Unified	8	63,260.00	0	0	8	100	8	100	11/01/05
Orange	Placentia-Yorba Linda Unified	2	22,400.00	0	0	2	100	2	100	12/01/05
Orange	Santa Ana Unified	37	480,050.00	0	0	0	0	0	0	09/30/05
Orange	Westminster Elementary	2	15,000.00	0	0	2	100	0	0	10/31/05
Orange	Tustin Unified	3	22,500.00	0	0	3	100	0	0	09/01/05
Placer	Placer County Office of Education	1	7,500.00	0	0	0	0	0	0	01/01/06
Placer	Placer Union High	1	7,500.00	0	0	1	100	1	100	10/31/05
Placer	Tahoe-Truckee Unified	1	7,500.00	0	0	1	100	0	0	07/15/05
Riverside	Alvord Unified	10	98,830.00	0	0	0	0	0	0	06/30/05
Riverside	Banning Unified	5	41,560.00	0	0	5	100	5	100	01/01/06
Riverside	Corona-Norco Unified	4	42,420.00	0	0	4	100	0	0	06/30/05
Riverside	Desert Sands Unified	11	102,660.00	0	0	0	0	0	0	01/01/06
Riverside	Hemet Unified	2	16,360.00	0	0	0	0	0	0	08/19/05
Riverside	Jurupa Unified	11	130,490.00	0	0	0	0	0	0	09/30/05
Riverside	Moreno Valley Unified	12	150,960.00	0	0	12	100	12	100	12/01/05
Riverside	Palm Springs Unified	12	131,050.00	0	0	0	0	0	0	01/01/06
Riverside	Palo Verde Unified	4	31,840.00	0	0	0	0	0	0	06/30/05
Riverside	Perris Elementary	5	47,600.00	0	0	0	0	0	0	11/30/05
Riverside	Perris Union High	2	37,030.00	0	0	0	0	0	0	01/01/06
Riverside	Riverside Unified	4	49,070.00	0	0	0	0	0	0	11/01/05
Riverside	Romoland Elementary	2	17,630.00	0	0	2	100	0	0	01/01/06
Riverside	San Jacinto Unified	4	36,160.00	0	0	4	100	0	0	12/01/05
Riverside	Coachella Valley Unified	15	143,470.00	0	0	15	100	1	7	12/01/05
Riverside	Lake Elsinore Unified	3	24,470.00	0	0	0	0	0	0	09/30/05
Riverside	Temecula Valley Unified	1	7,500.00	0	0	0	0	0	0	04/27/05

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Riverside	Val Verde Unified	2	19,610.00	0	0	2	100	0	0	05/30/05
Sacramento	Sacramento County Office of Education	1	7,500.00	0	0	0	0	0	0	08/30/05
Sacramento	Del Paso Heights Elementary	4	30,000.00	0	0	4	100	0	0	12/15/05
Sacramento	Elk Grove Unified	3	32,820.00	0	0	3	100	3	100	08/01/05
Sacramento	Folsom-Cordova Unified	2	15,000.00	0	0	0	0	0	0	09/02/05
Sacramento	Galt Joint Union Elementary	1	7,500.00	0	0	0	0	0	0	09/30/05
Sacramento	Grant Joint Union High	8	94,740.00	0	0	8	100	0	0	12/15/05
Sacramento	North Sacramento Elementary	8	60,410.00	0	0	8	100	3	38	10/01/05
Sacramento	Rio Linda Union Elementary	3	22,500.00	0	0	3	100	1	33	06/11/05
Sacramento	River Delta Joint Unified	2	15,000.00	0	0	2	100	0	0	09/30/05
Sacramento	Sacramento City Unified	32	293,960.00	0	0	32	100	0	0	12/31/05
Sacramento	San Juan Unified	8	60,990.00	0	0	0	0	0	0	12/31/05
Sacramento	Natomas Unified	1	7,500.00	0	0	1	100	1	100	05/30/05
San Benito	Hollister Elementary	3	22,870.00	0	0	3	100	0	0	09/30/05
San Benito	Aromas-San Juan	1	7,500.00	0	0	1	100	0	0	12/31/05
San Bernardino	San Bernardino County Office of Education	1	17,880.00	0	0	0	0	0	0	12/30/05
San Bernardino	Adelanto Elementary	3	22,500.00	0	0	3	100	0	0	12/15/05
San Bernardino	Barstow Unified	3	22,500.00	0	0	3	100	0	0	12/01/05
San Bernardino	Chaffey Joint Union High	3	91,940.00	0	0	0	0	0	0	11/30/05
San Bernardino	Chino Valley Unified	4	47,650.00	0	0	4	100	4	100	12/01/05
San Bernardino	Colton Joint Unified	15	171,440.00	0	0	15	100	15	100	12/01/05
San Bernardino	Cucamonga Elementary	1	7,500.00	0	0	1	100	0	0	07/01/05
San Bernardino	Fontana Unified	22	281,090.00	0	0	0	0	0	0	12/15/05
San Bernardino	Morongo Unified	1	7,500.00	0	0	1	100	1	100	12/15/05
San Bernardino	Needles Unified	2	15,000.00	0	0	2	100	2	100	08/01/05
San Bernardino	Ontario-Montclair	26	235,800.00	0	0	0	0	0	0	12/27/05
San Bernardino	Redlands Unified	2	15,000.00	0	0	0	0	0	0	12/01/05
San Bernardino	Rialto Unified	14	205,750.00	0	0	0	0	0	0	01/01/06
San Bernardino	San Bernardino City Unified	42	480,420.00	0	0	0	0	0	0	01/01/06
San Bernardino	Victor Elementary	4	30,000.00	0	0	0	0	0	0	12/30/05
San Bernardino	Victor Valley Union High	2	58,060.00	0	0	2	100	2	100	10/15/05
San Bernardino	Silver Valley Unified	1	7,500.00	0	0	1	100	1	100	12/31/05
San Bernardino	Hesperia Unified	3	29,320.00	0	0	3	100	3	100	10/15/05
San Bernardino	Lucerne Valley Unified	3	22,500.00	0	0	3	100	0	0	05/20/05
San Diego	Cajon Valley Union Elementary	5	41,690.00	0	0	0	0	0	0	09/30/05
San Diego	Chula Vista Elementary	9	68,630.00	0	0	9	100	0	0	12/15/05
San Diego	Escondido Union Elementary	8	75,270.00	0	0	8	100	0	0	12/15/05
San Diego	Escondido Union High	1	7,500.00	0	0	1	100	1	100	06/27/05
San Diego	Grossmont Union High	3	37,300.00	0	0	3	100	3	100	07/01/05
San Diego	La Mesa-Spring Valley	1	7,500.00	0	0	1	100	0	0	12/15/05

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San Diego	Mountain Empire Unified	1	7,500.00	0	0	1	100	0	0	06/30/05
San Diego	National	3	23,520.00	0	0	3	100	0	0	06/30/05
San Diego	San Diego City Unified	40	407,260.00	0	0	39	98	0	0	08/30/05
San Diego	San Ysidro Elementary	5	40,840.00	0	0	5	100	0	0	12/15/05
San Diego	South Bay Union Elementary	6	52,150.00	0	0	6	100	0	0	12/15/05
San Diego	Sweetwater Union High	11	202,380.00	0	0	11	100	11	100	12/15/05
San Diego	Vista Unified	4	44,650.00	0	0	4	100	4	100	12/09/05
San Diego	Oceanside City Unified	4	30,000.00	0	0	4	100	0	0	12/15/05
San Diego	San Marcos Unified	1	7,500.00	0	0	1	100	0	0	07/01/05
San Diego	Valley Center-Pauma	1	7,500.00	0	0	1	100	1	100	04/29/05
San Francisco	San Francisco County Office of Education	1	7,500.00	0	0	0	0	0	0	12/31/05
San Francisco	San Francisco Unified	43	342,570.00	0	0	0	0	0	0	12/31/05
San Joaquin	San Joaquin County Office of Education	1	7,500.00	0	0	0	0	0	0	12/31/05
San Joaquin	Banta Elementary	1	7,500.00	0	0	0	0	0	0	11/30/05
San Joaquin	Holt Union Elementary	1	7,500.00	0	0	0	0	0	0	07/01/05
San Joaquin	Lincoln Unified	3	22,500.00	0	0	3	100	0	0	07/31/05
San Joaquin	Linden Unified	1	7,500.00	0	0	1	100	0	0	06/19/05
San Joaquin	Lodi Unified	15	140,000.00	0	0	0	0	0	0	11/01/05
San Joaquin	Manteca Unified	4	43,790.00	0	0	4	100	4	100	05/31/05
San Joaquin	New Hope Elementary	1	7,500.00	0	0	1	100	1	100	04/29/05
San Joaquin	Stockton Unified	34	368,940.00	0	0	34	100	34	100	12/31/05
San Joaquin	Tracy Joint Unified	4	33,560.00	0	0	4	100	4	100	05/31/05
San Luis Obispo	San Luis Obispo County Office of Education	1	7,500.00	0	0	0	0	0	0	09/30/05
San Luis Obispo	Lucia Mar Unified	1	7,500.00	0	0	1	100	0	0	12/30/05
San Luis Obispo	Shandon Joint Unified	1	7,500.00	0	0	1	100	0	0	12/15/05
San Luis Obispo	Paso Robles Joint Unified	1	7,500.00	0	0	1	100	1	100	06/30/05
San Mateo	San Mateo County Office of Education	1	7,500.00	0	0	0	0	0	0	12/31/05
San Mateo	La Honda-Pescadero Unified	1	7,500.00	0	0	0	0	0	0	12/31/05
San Mateo	Ravenswood City Elementary	6	45,070.00	0	0	0	0	0	0	01/01/06
San Mateo	Redwood City Elementary	7	53,340.00	0	0	0	0	0	0	01/01/06
San Mateo	San Mateo-Foster City	1	7,500.00	0	0	0	0	0	0	10/01/05
San Mateo	Sequoia Union High	1	15,490.00	0	0	1	100	1	100	09/30/05
San Mateo	South San Francisco Unified	1	7,780.00	0	0	1	100	1	100	06/01/05
Santa Barbara	Santa Barbara County Office of Education	1	7,500.00	0	0	1	100	0	0	01/01/06
Santa Barbara	Santa Maria-Bonita	10	81,840.00	0	0	10	100	7	70	10/15/05
Santa Barbara	Guadalupe Union Elementary	1	8,030.00	0	0	1	100	1	100	06/01/05
Santa Barbara	Lompoc Unified	2	15,000.00	0	0	2	100	2	100	01/01/06
Santa Barbara	Santa Barbara Elementary	2	15,000.00	0	0	2	100	0	0	08/01/05
Santa Barbara	Santa Barbara High	1	7,500.00	0	0	1	100	0	0	08/01/05
Santa Barbara	Santa Maria Joint Union Hig	1	38,030.00	0	0	1	100	1	100	04/29/05

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Santa Barbara	Cuyama Joint Unified	1	7,500.00	0	0	1	100	1	100	08/01/05
Santa Clara	Santa Clara County Office of Education	1	14,370.00	0	0	0	0	0	0	09/30/05
Santa Clara	Alum Rock Union Elementary	13	97,900.00	0	0	13	100	0	0	12/15/05
Santa Clara	Campbell Union Elementary	1	7,500.00	0	0	1	100	0	0	01/01/06
Santa Clara	East Side Union High	4	61,720.00	0	0	4	100	4	100	12/09/05
Santa Clara	Franklin-McKinley Elementary	6	45,490.00	0	0	6	100	6	100	01/01/06
Santa Clara	Gilroy Unified	2	22,500.00	0	0	2	100	2	100	05/16/05
Santa Clara	Luther Burbank Elementary	1	7,500.00	0	0	1	100	1	100	07/25/05
Santa Clara	Moreland Elementary	1	7,500.00	0	0	0	0	0	0	01/01/06
Santa Clara	Mountain View-Whisman Elementary	1	7,500.00	0	0	1	100	1	100	08/31/05
Santa Clara	San Jose Unified	11	113,400.00	0	0	0	0	0	0	12/31/05
Santa Clara	Santa Clara Unified	2	15,000.00	0	0	0	0	0	0	09/30/05
Santa Cruz	Pajaro Valley Unified	16	148,800.00	0	0	16	100	0	0	12/31/05
Shasta	Shasta County Office of Education	1	7,500.00	0	0	1	100	0	0	06/01/05
Shasta	Cascade Union Elementary	1	7,500.00	0	0	1	100	1	100	04/11/05
Shasta	Happy Valley Union Elementary	1	7,500.00	0	0	1	100	1	100	06/01/05
Shasta	Redding Elementary	2	15,000.00	0	0	0	0	0	0	12/30/05
Siskiyou	Montague Elementary	1	7,500.00	0	0	1	100	0	0	09/30/05
Solano	Dixon Unified	1	7,500.00	0	0	0	0	0	0	12/31/05
Solano	Fairfield-Suisun Unified	8	79,800.00	0	0	0	0	0	0	12/01/05
Solano	Vacaville Unified	2	16,300.00	0	0	0	0	0	0	12/31/05
Solano	Vallejo City Unified	10	98,790.00	0	0	10	100	0	0	12/31/05
Sonoma	Sonoma County Office of Education	1	7,500.00	0	0	0	0	0	0	04/29/05
Sonoma	Bellevue Union Elementary	2	15,000.00	0	0	2	100	0	0	12/31/05
Sonoma	Petaluma City Elementary	2	15,000.00	0	0	0	0	0	0	09/30/05
Sonoma	Roseland Elementary	2	15,000.00	0	0	2	100	0	0	12/31/05
Sonoma	Santa Rosa Elementary	6	45,000.00	0	0	6	100	6	100	12/02/05
Sonoma	Santa Rosa High	1	7,710.00	0	0	1	100	1	100	12/02/05
Sonoma	Sonoma Valley Unified	2	15,000.00	0	0	2	100	2	100	12/15/05
Sonoma	Cotati-Rohnert Park Unified	1	7,500.00	0	0	0	0	0	0	11/30/05
Stanislaus	Stanislaus County Office of Education	1	7,500.00	0	0	0	0	0	0	09/30/05
Stanislaus	Keyes Union Elementary	1	15,000.00	0	0	1	100	1	100	09/30/05
Stanislaus	Modesto City Elementary	13	112,020.00	0	0	13	100	0	0	12/15/05
Stanislaus	Stanislaus Union Elementary	1	7,500.00	0	0	0	0	0	0	05/01/05
Stanislaus	Turlock Joint Elementary	3	24,460.00	0	0	0	0	0	0	12/15/05
Stanislaus	Newman-Crows Landing Unified	1	7,500.00	0	0	1	100	0	0	06/30/05
Stanislaus	Riverbank Unified	3	24,070.00	0	0	0	0	0	0	12/31/05
Sutter	Sutter County Office of Education	1	7,500.00	0	0	0	0	0	0	12/31/05
Sutter	Yuba City Unified	2	15,000.00	0	0	2	100	2	100	06/30/05
Tehama	Corning Union Elementary	1	7,500.00	0	0	0	0	0	0	12/15/05

COUNTY	DISTRICT	TOTAL ELIGIBLE SCHOOL SITES	TOTAL APPORTIONMENT	RESPONSE 1	PERCENT SUBMITTED	RESPONSE 2	PERCENT WITH DESIGNATED INSPECTOR	RESPONSE 3	PERCENT ASSESSMENT BEGUN	RESPONSE 4
Tehama	Red Bluff Union Elementary	1	7,500.00	0	0	0	0	0	0	04/29/05
Tulare	Alta Vista Elementary	1	7,500.00	0	0	1	100	1	100	06/01/05
Tulare	Cutler-Orosi Joint Unified	5	39,590.00	0	0	5	100	5	100	06/01/05
Tulare	Ducor Union Elementary	1	7,500.00	0	0	0	0	0	0	08/15/05
Tulare	Earlimart Elementary	2	22,920.00	0	0	2	100	2	100	07/01/05
Tulare	Kings River Union Elementary	1	7,500.00	0	0	1	100	1	100	10/15/05
Tulare	Liberty Elementary	1	7,500.00	0	0	1	100	1	100	10/15/05
Tulare	Lindsay Unified	5	38,600.00	0	0	5	100	0	0	06/30/05
Tulare	Pixley Union Elementary	1	9,380.00	0	0	1	100	1	100	05/30/05
Tulare	Pleasant View Elementary	1	7,500.00	0	0	1	100	1	100	07/13/05
Tulare	Strathmore Union Elementary	1	7,500.00	0	0	1	100	1	100	10/15/05
Tulare	Sunnyside Union Elementary	1	7,500.00	0	0	1	100	1	100	06/01/05
Tulare	Terra Bella Union Elementary	2	15,000.00	0	0	2	100	2	100	07/01/05
Tulare	Tipton Elementary	1	7,500.00	0	0	1	100	1	100	10/15/05
Tulare	Tulare City Elementary	5	37,500.00	0	0	5	100	5	100	07/01/05
Tulare	Tulare Joint Union High	1	7,500.00	0	0	1	100	0	0	05/31/05
Tulare	Visalia Unified	11	88,510.00	0	0	0	0	0	0	07/01/05
Tulare	Waukena Joint Union Elementary	1	7,500.00	0	0	1	100	0	0	08/01/05
Tulare	Woodlake Union Elementary	3	22,500.00	0	0	3	100	3	100	07/01/05
Tulare	Woodlake Union High	1	7,500.00	0	0	1	100	1	100	07/01/05
Tulare	Woodville Elementary	1	7,500.00	0	0	0	0	0	0	06/06/05
Tulare	Farmersville Unified	4	30,000.00	0	0	4	100	3	75	10/15/05
Tulare	Porterville Unified	10	94,870.00	0	0	10	100	0	0	06/24/05
Tulare	Dinuba Unified	5	45,710.00	0	0	5	100	0	0	06/01/05
Ventura	Ventura County Office of Education	1	7,500.00	0	0	0	0	0	0	01/01/06
Ventura	Fillmore Unified	1	10,910.00	0	0	0	0	0	0	08/01/05
Ventura	Hueneme Elementary	5	38,380.00	0	0	0	0	0	0	12/15/05
Ventura	Ocean View Elementary	2	15,000.00	0	0	2	100	0	0	12/26/05
Ventura	Oxnard Elementary	14	122,620.00	0	0	14	100	14	100	12/31/05
Ventura	Oxnard Union High	3	106,770.00	0	0	0	0	0	0	12/15/05
Ventura	Rio Elementary	4	38,890.00	0	0	0	0	0	0	06/30/05
Ventura	Santa Paula Elementary	6	50,330.00	0	0	0	0	0	0	09/01/05
Ventura	Santa Paula Union High	1	16,200.00	0	0	0	0	0	0	10/31/05
Ventura	Ventura Unified	4	30,450.00	0	0	0	0	0	0	12/01/05
Yolo	Washington Unified	2	15,000.00	0	0	2	100	2	100	07/15/05
Yolo	Winters Joint Unified	1	7,500.00	0	0	1	100	1	100	07/01/05
Yolo	Woodland Joint Unified	4	31,090.00	0	0	4	100	0	0	06/30/05
Yuba	Marysville Joint Unified	7	57,850.00	0	0	7	100	7	100	06/14/05
	TOTALS	**2,081**	**$22,711,710.00**	**0**	**0**	**1,174**	**56**	**455**	**22**	

Appendix 2: List of Participating Charter Schools

CHARTER SCHOOL	COUNTY	LEA	APPORTIONMENT AMOUNT
Darnall E-Campus Charter	San Diego	San Diego City	$ 7,500
Garfield Charter	San Mateo	Redwood City Elementary	$ 7,500
MAAC Community Charter	San Diego	Sweetwater Union High	$ 7,500
Pacoima Charter Elementary	Los Angeles	Los Angeles Unified	$14,870
Shearer Charter	Napa	Napa Valley Unified	$ 7,500
Vaughn Next Century Learning	Los Angeles	Los Angeles Unified	$12,400

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Appendix 3: LEAs Not Completing a Progress Survey

COUNTY	LEA	TOTAL NUMBER OF SCHOOL SITES
Los Angeles	Los Angeles County Office of Education	1
Madera	Madera County Officer of Education	1

These LEAs have informed the OPSC that a survey was not submitted due to the on-going discussions to remove special education programs from the CDE list.

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V. Interpretation
A. Nature and Applicability of Statutory Construction
2. Nature of Judicial Role

Topic Summary Correlation Table References

§ 91. Changes to statutory language—Surplusage

West's Key Number Digest

West's Key Number Digest, Statutes k176, 188, 199, 203, 205, 206

Courts do not presume that the legislature performs idle acts, nor do they construe statutory provisions so as to render them superfluous.[1] Statutory interpretations that render words surplusage are to be avoided[2] as are interpretations that would render related provisions nugatory.[3] The courts should give meaning to every word of a statute if possible.[4]

However, the rule against statutory interpretations that make some parts of a statute surplusage is only a guide and will not be applied if it would defeat legislative intent or produce an absurd result.[5] While a statute should be interpreted so as to eliminate language being rendered surplusage,[6] there is no rule of construction requiring courts to assume that the legislature has used the most economical means of expression in drafting a statute.[7]

[FN1] Imperial Merchant Services, Inc. v. Hunt, 47 Cal. 4th 381, 97 Cal. Rptr. 3d 464, 212 P.3d 736 (2009).

[FN2] Lopez v. Superior Court, 50 Cal. 4th 1055, 116 Cal. Rptr. 3d 530, 239 P.3d 1228 (2010); McCarther v. Pacific Telesis Group, 48 Cal. 4th 104, 105 Cal. Rptr. 3d 404, 225 P.3d 538 (2010); Metcalf v. County of San Joaquin, 42 Cal. 4th 1121, 72 Cal. Rptr. 3d 382, 176 P.3d 654 (2008).

[FN3] Harris v. Superior Court, 53 Cal. 4th 170, 135 Cal. Rptr. 3d 247, 266 P.3d 953 (2011); Steinhart v. County of Los Angeles, 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010); Troppman v. Valverde, 40 Cal. 4th 1121, 57 Cal. Rptr. 3d 306, 156 P.3d 328 (2007).

[FN4] In re C.H., 53 Cal. 4th 94, 133 Cal. Rptr. 3d 573, 264 P.3d 357 (2011); Cortez v. Abich, 51 Cal. 4th 285, 120 Cal. Rptr. 3d 520, 246 P.3d 603 (2011); McCarther v. Pacific Telesis Group, 48 Cal. 4th 104, 105 Cal. Rptr. 3d 404, 225 P.3d 538 (2010).

[FN5] In re J.W., 29 Cal. 4th 200, 126 Cal. Rptr. 2d 897, 57 P.3d 363 (2002); In re J.N., 181 Cal. App. 4th 1010, 104 Cal. Rptr. 3d 478 (6th Dist. 2010); People v. Deporceri, 106 Cal. App. 4th 60, 130 Cal. Rptr. 2d 280 (6th Dist. 2003).

[FN6] Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994); Kotler v. Alma Lodge, 63 Cal. App. 4th 1381, 74 Cal. Rptr. 2d 721 (2d Dist. 1998).

[FN7] Voters for Responsible Retirement v. Board of Supervisors, 8 Cal. 4th 765, 35 Cal. Rptr. 2d 814, 884 P.2d 645 (1994).

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2. Nature of Judicial Role

Topic Summary Correlation Table References

§ 92. Consideration of legislative motive, wisdom, or policy

West's Key Number Digest

West's Key Number Digest, Statutes k176, 180 to 186

The courts do not sit as super-legislatures to determine the desirability or propriety of statutes.[1] In interpreting statutes, courts follow the legislature's intent, as exhibited by the plain meaning of the actual words of the law, whatever may be thought of the wisdom,[2] expediency, or policy of the act.[3] The issue is not the beliefs and motives of individual members of the legislature but the collective intent of the legislature as objectively manifested in the adoption of particular measures.[4]

A legislative declaration of a statute's meaning is given due consideration but is not conclusive; ultimately, the interpretation of a statute is an exercise of the judicial power that the constitution assigns to the courts.[5] The views of individual legislators carry little weight in interpreting the intent of the legislative body as a whole;[6] courts do not consider the motives or understandings of individual legislators, including the bill's author;[7] no guarantee can issue that others who supported a legislator's proposal shared that legislator's view of the legislation's compass.[8]

The court's power is confined to a determination of whether the subject of the legislation is within the legislative power and whether the means adopted by the legislature to accomplish the desired result are reasonably appropriate to that purpose and have a substantial relation to the result.[9] When the wisdom, necessity, or propriety of an enactment is a question upon which reasonable minds might differ, the court will defer to the legislative determination.[10] It is court's function to give a statute the effect that its language suggests, however modest that may be, not to extend it to admirable purposes that it might be used to achieve.[11]

Under the doctrine of separation of powers, neither trial nor appellate courts are authorized to review legislative determinations, and the only function of the courts is to determine whether the exercise of legislative power has exceeded constitutional limitations.[12] Hence, the fact that the court may not agree with the wisdom of the enactment or that it doubts its beneficial character does not justify the ignoring of plain and unambiguous language.[13] When the balance of interests struck by the legislature in a statute is not constitutionally offensive, a court may not upset that balance.[14]

[FN1] Estate of Horman, 5 Cal. 3d 62, 95 Cal. Rptr. 433, 485 P.2d 785 (1971); Page v. MiraCosta Community College Dist., 180 Cal. App. 4th 471, 102 Cal. Rptr. 3d 902, 252 Ed. Law Rep. 278 (4th Dist. 2009), review denied, (Mar. 24, 2010).

[FN2] Smith v. Anderson, 67 Cal. 2d 635, 63 Cal. Rptr. 391, 433 P.2d 183 (1967).

[FN3] Larry Menke, Inc. v. DaimlerChrysler Motors Co., 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389 (4th Dist. 2009); Tendler v. www.jewishsurvivors.blogspot.com, 164 Cal. App. 4th 802, 79 Cal. Rptr. 3d 407 (6th Dist. 2008); Benson v. Kwikset Corp., 152 Cal. App. 4th 1254, 62 Cal. Rptr. 3d 284 (4th Dist. 2007), as modified on denial of reh'g, (July 26, 2007).

[FN4] City of King City v. Community Bank of Central California, 131 Cal. App. 4th 913, 32 Cal. Rptr. 3d 384 (6th Dist. 2005), as modified on denial of reh'g, (Sept. 1, 2005).

[FN5] Alch v. Superior Court, 122 Cal. App. 4th 339, 19 Cal. Rptr. 3d 29 (2d Dist. 2004).

[FN6] Martinez v. The Regents of the University of California, 50 Cal. 4th 1277, 117 Cal. Rptr. 3d 359, 241 P.3d 855, 261 Ed. Law Rep. 1088 (2010), cert. denied, 131 S. Ct. 2961, 180 L. Ed. 2d 245 (2011).

[FN7] Murphy v. Kenneth Cole Productions, Inc., 40 Cal. 4th 1094, 56 Cal. Rptr. 3d 880, 155 P.3d 284 (2007).

[FN8] Ross v. RagingWire Telecommunications, Inc., 42 Cal. 4th 920, 70 Cal. Rptr. 3d 382, 174 P.3d 200, 57 A.L.R.6th 727 (2008).

[FN9] Eye Dog Foundation v. State Bd. of Guide Dogs for Blind, 67 Cal. 2d 536, 63 Cal. Rptr. 21, 432 P.2d 717 (1967); Butterworth v. Boyd, 12 Cal. 2d 140, 82 P.2d 434, 126 A.L.R. 838 (1938).

[FN10] Miller v. Board of Public Works of City of Los Angeles, 195 Cal. 477, 234 P. 381, 38 A.L.R. 1479 (1925); Town of Atherton v. Templeton, 198 Cal. App. 2d 146, 17 Cal. Rptr. 680 (1st Dist. 1961).

[FN11] Morrison v. National Australia Bank Ltd., 130 S. Ct. 2869, 177 L. Ed. 2d 535, 76 Fed. R. Serv. 3d 1330 (2010).

[FN12] Lockard v. City of Los Angeles, 33 Cal. 2d 453, 202 P.2d 38, 7 A.L.R.2d 990 (1949); Stribling v. Mailliard, 6 Cal. App. 3d 470, 85 Cal. Rptr. 924 (1st Dist. 1970).

[FN13] Juarez v. 21st Century Ins. Co., 105 Cal. App. 4th 371, 129 Cal. Rptr. 2d 418 (2d Dist. 2003); In re Carter's Estate, 9 Cal. App. 2d 714, 50 P.2d 1057 (1st Dist. 1935).

[FN14] Regents of University of California v. Superior Court, 20 Cal. 4th 509, 85 Cal. Rptr. 2d 257, 976 P.2d 808, 138 Ed. Law Rep. 1178 (1999).

As to changes in judicial interpretation, see §§ 96, 97.

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C. Phraseology; Language; Punctuation; Grammar
2. Rules Governing Definitions
a. General Principles

Topic Summary Correlation Table References

§ 138. Words with settled legal meaning

West's Key Number Digest

West's Key Number Digest, Statutes k192, 193

Words that have acquired a peculiar and appropriate meaning in law are to be construed according to such peculiar and appropriate meaning or definition.[1] A statutory word or phrase having a technical, legal meaning requiring clarification by a court is one that has a definition that differs from its nonlegal meaning.[2]

Generally, words that have acquired a particular meaning in law are to be so construed,[3] and in particular, a word or phrase having a well-known and definite legal meaning will be construed to have the same meaning when used in a statute[4] unless a contrary intent clearly appears.[5] This rule applies most obviously when the meaning of the word in question is wholly or primarily legal.[6]

Where the language of a statute uses terms that have been judicially construed, the presumption is almost irresistible that the terms have been used in the precise and technical sense that had been placed upon them by the courts.[7] When words used in a statute have acquired a settled meaning through judicial interpretation, the words should be given the same meaning when used in a later statute dealing with an analogous subject matter. This is particularly true where both statutes are in harmony with each other.[8] If a term known to the common law has not otherwise been defined by statute, it is assumed that the common-law meaning was intended.[9]

Practice Tip:

Unless the context requires a different construction, the word "laws," in a legislative act, refers to statutory laws rather than the common law.[10]

[FN1] Civ. Code, § 13; Civ. Proc. Code, § 16.

[FN2] People v. Adams, 124 Cal. App. 4th 1486, 21 Cal. Rptr. 3d 920 (5th Dist. 2004).

[FN3] Professional Engineers in California Government v. State Personnel Bd., 90 Cal. App. 4th 678, 109 Cal. Rptr. 2d 375 (3d Dist. 2001), as modified, (Aug. 10, 2001).

[FN4] Arnett v. Dal Cielo, 14 Cal. 4th 4, 56 Cal. Rptr. 2d 706, 923 P.2d 1 (1996); Chude v. Jack in the Box Inc., 185 Cal. App. 4th 37, 109 Cal. Rptr. 3d 773 (2d Dist. 2010); Ung v. Koehler, 135 Cal. App. 4th 186, 37 Cal. Rptr. 3d 311 (1st Dist. 2005), as modified on denial of reh'g, (Jan. 25, 2006).

[FN5] Santa Clara Valley Transp. Authority v. Public Utilities Com. State of California, 124 Cal. App. 4th 346, 21 Cal. Rptr. 3d 270 (6th Dist. 2004); Gravelly Ford Canal Co. v. Pope & Talbot Land Co., 36 Cal. App. 556, 178 P. 150 (3d Dist. 1918).

[FN6] Arnett v. Dal Cielo, 14 Cal. 4th 4, 56 Cal. Rptr. 2d 706, 923 P.2d 1 (1996).

[FN7] Hughes v. Pair, 46 Cal. 4th 1035, 95 Cal. Rptr. 3d 636, 209 P.3d 963 (2009); Richardson v. Superior Court, 43 Cal. 4th 1040, 77 Cal. Rptr. 3d 226, 183 P.3d 1199 (2008), as modified, (July 16, 2008).

This principle also applies to legislation adopted through the initiative process. People v. Lawrence, 24 Cal. 4th 219, 99 Cal. Rptr. 2d 570, 6 P.3d 228 (2000), as modified, (Oct. 3, 2000).

As to initiatives, see Cal. Jur. 3d, Initiative and Referendum § 4.

[FN8] Ventura County Deputy Sheriffs' Assn. v. Board of Retirement, 16 Cal. 4th 483, 66 Cal. Rptr. 2d 304, 940 P.2d 891, 91 A.L.R.5th 677 (1997); People v. Castillo, 182 Cal. App. 4th 1410, 106 Cal. Rptr. 3d 688 (3d Dist. 2010), review denied, (June 9, 2010).

[FN9] People v. Lopez, 31 Cal. 4th 1051, 6 Cal. Rptr. 3d 432, 79 P.3d 548 (2003).

[FN10] Gilliam v. California Employment Stabilization Commission, 130 Cal. App. 2d 102, 278 P.2d 528 (1st Dist. 1955).

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ren·o·va·tion *MF renovation*, fr. L *renovation-, renovatio*, fr. *renovatus* (past part. of *renovare* to renew) + *-ion-, -io* -ion — more at RENOVATE] **1** : the act or process of renovating : making over : REVIVAL **2** : the state of being renovated

ren·o·va·tion·ist \-sh(ə)nəst\ *n -s* [*renovation* + *-ist*] : an advocate of renovation (as of a government)

ren·o·va·tor \'enəˌvād·ə(r), -ātə-\ *n* [LL, fr. L *renovatus* + *-or*] **1** : one that renovates (as worn or damaged articles) **2** : a nozzle attachment for the suction pipe of a vacuum cleaner

¹re·nown \rə'naůn, rē'-\ *n -s* [ME *renoun*, fr. MF *renon*, fr. OF, fr. *renomer* to celebrate, fr. *re-* + *nomer* to name, fr. L *nominare*, fr. *nomin-, nomen* name — more at NAME] **1** : the state of being widely acclaimed and highly honored (as for signal achievement) ⟨poet of great ~⟩ ⟨the increasing ~ of the university⟩ ⟨win ~ by a deed of heroism⟩ **2** *obs* **a** : REPORT, RUMOR; *also* : good report **b** : REPUTATION; *also* : NOTORIETY **3** : something renowned (as a deed) **syn** see FAME

²renown \"\ *vt* -ED/-ING/-S [MF *renommer*, fr. OF *renomer*] : to give renown to : make renowned

re·nowned \-nd\ *adj* [ME *renouned*, fr. past part. of *renoun* to renown] : having renown : CELEBRATED ⟨one of the most ~ shrines on the continent⟩ — **re·nowned·ly** \-nədlē, -nd-\ *adv* — **re·nowned·ness** \-nədnəs, -n(d)n-\ *n* -ES

re·nown·er \-nə(r)\ *n -s* [*renown* + *-er*] : one that gives renown

rens·se·laer·ite \'ren(t)sələ,rīt, ¦ren(t)sə¦lī,rīt\ *n -s* [Stephen Van *Rensselaer* †1839 Am. army officer and politician + E *-ite*] : a soft compact talc that is an altered pyroxene and is often worked in a lathe into articles (as inkstands)

¹rent \'rent\ *n -s often attrib* [ME *rente*, fr. OF, income from a property, fr. (assumed) VL *rendita*, fr. fem. of past part. of (assumed) *rendere* to yield — more at RENDER] **1** *also* **rents** *pl, chiefly dial* : a piece of property that the owner allows another to use in exchange for a payment in services, kind, or money ; a rented property; *esp* : an apartment or house that rents **2** *obs* **a** : REVENUE, INCOME **b** : TRIBUTE, TAX, TOLL **3 a** : a return made by a tenant or occupant of land or corporeal hereditaments to the owner for the possession and use thereof : a fixed periodical profit in money, provisions, chattels, or services issuing out of lands and tenements in payment for use; *esp* : a pecuniary sum agreed upon between a tenant and his landlord and paid at fixed intervals by the tenant to the landlord for the use of land or its appendages ⟨~ for a house⟩ **b** : the amount paid by a hirer or lessee of personal property (as farming stock, machinery) to the owner for the use thereof whether combined with rent for land or not **c** : a royalty under a mineral lease **d** : compensation for use and occupation of real estate not arising out of a lease in writing **4 a** : the portion of the income of an economy (as of a nation) attributable to land as a factor of production in addition to capital and labor : the income of landowners as a class — compare PROFIT, WAGE **b** : the income earned by a unit of production (as a market garden, a repairman) beyond the minimum required to make employment in such production worth while by meeting costs and at least equaling other possible employments in returns : the difference between the actual return from a commodity or service and the supply price : ECONOMIC RENT **c** : income or gain that is a differential return (as the excess of personal earnings of a producer of rare ability over those of an average producer) or as a surplus above costs ⟨entrepreneur's ~ denotes the profits of an ably managed . . . enterprise, conceived of as a differential above the return secured by a marginal undertaking which is barely able to meet its costs —A.A.Young⟩ — see CONSUMER'S SURPLUS, PRODUCER'S SURPLUS — **for rent** : available for use or service in return for payment : to let ⟨a house *for rent*⟩ : for hire ⟨costumes *for rent*⟩

²rent \"\ *vb* -ED/-ING/-S [ME *renten*, fr. *rente* rent] *vt* **1** *obs* : to give revenues or an endowment to : ENDOW **2** : to take and hold under an agreement to pay rent : pay rent for ⟨the tenant ~s the house by the month under a one-year lease⟩ **3** : to grant the possession and enjoyment of for rent : hire out : LET ⟨the owner ~s the house at a reasonable figure⟩ ~ *vi* **1** : to be for rent ⟨the largest apartment ~s for $800 a year⟩ **2 a** : to obtain the possession and use of a place or article for rent ⟨~s from the family in the other apartment⟩ **b** : to allow the possession and use of property for rent ⟨~s to families with children⟩

³rent *past of* REND

⁴rent \'rent\ *vb* [ME *renten*, alter. (influenced by *³rent*) of *renden* to rend] *dial chiefly Eng* : REND, TEAR

⁵rent \"\ *n -s* **1** : an opening (as a tear in cloth, a cleft in the earth, a gorge, a crack in wood) made by or as if by rending **2** : a split in a party or organized group : SCHISM **3** : an act or an instance of rending **syn** see BREACH

rent·abil·i·ty \ˌrentə'bilədē\ *n* : the quality or state of being rentable

rent·able \-təbəl\ *adj* [*²rent* + *-able*] : that can be rented

rent·age \'rentij\ *n -s* [*¹rent* + *-age*] : RENT, RENTAL

¹rent·al \-t³l\ *n -s* [ME, fr. ML *rentale*, fr. ME *rente* rent + L *-ale*, neut. of *-alis* -al] **1** : RENT-ROLL **2** : an amount paid or collected as rent : income from rent ⟨collected the most ~ of the city's apartment house owners⟩ : return (as a sum of money) given or received as rent : the amount of rent ⟨the average ~ (including gas, electricity, heat, and janitor service) is $8.08 per month for each room —*Amer. Guide Series: N.J.*⟩ **3** *Scots law, obs* : a tack usu. for life for a low customary rent granted to kindly tenants **4** : a property (as an apartment, automobile, dinner jacket) that is given for use in return for payment : something rented ⟨moved to a cheaper ~⟩ **5** : an act of renting ⟨~s are made only to . . . established film societies —*Saturday Rev.*⟩ **6** : a business that rents something

²rental \"\ *adj* **1** : of or relating to rent ⟨~ charges⟩ **2** : that can be or has been rented ⟨~ housing⟩ ⟨a ~ car⟩ ⟨~ books⟩ **3** : dealing in rental property ⟨a ~ agency⟩

rental collection *n* : a collection of books in an otherwise free library (as in a college) that may be borrowed at a daily fee

rentaler *or* **rentaller** *n -s* [*¹rental* + *-er*] *obs* : KINDLY TENANT

rental library *n* : a commercially operated library (as in a store) that lends books at a usu. fixed charge per book per day (a drug store with a *rental library* serviced by a concession company) — called also *lending library*

rental value insurance *n* : insurance against loss to the occupant of the rental value of described premises because of specified damage to such premises

rent charge *n, pl* **rents charge** [*¹rent*] **1** : a periodical payment made a charge on land by reservation in a conveyance of land for life or in fee simple or granted by deed and expressly giving to the holder who has no reversionary interest in the land the right of distress for arrears — compare RENT SECK **2** *Brit* : an annual sum charged on land or payable out of the income of land to which attaches a statutory power of distress for arrears

rent charger *n* : the owner of a rent charge

rent control *n* : government regulation of the amount charged as rent for housing and often also of eviction

rente \'rānt\ *n -s* [F, income, rent, fr. OF — more at RENT] **1** : annual income under French law on property forever alienated of the same type as the English rents charge, rents seck, and annuities **2 a** : interest payable by the government of France and some other European countries on the consolidated debt **b** : a government security yielding rente

ren·ten·mark \'rentᵊnˌmärk\ *n, sometimes cap* [G, fr. *rente* income (fr. OF) + *mark* — more at RENT, MARK] : a temporary German monetary unit used for bank notes issued in 1923 to stabilize currency, made equivalent to one billion inflated imperial marks, and superseded by the reichsmark

ren·tier \'rānˌ(ˌ)tyā\ *n -s* [F, fr. OF, fr. *rente* + *-ier* -er] **1** : one who owns rentes **2** : a person who receives a fixed income (as from land, stocks, bonds) : one who lives on income from investments

renting *pres part of* RENT

rent insurance *n* [*¹rent*] : insurance against loss to a landlord because of suspension of rents resulting from specified damage to rented premises

¹rent·less \'rentləs\ *adj* [*¹rent* + *-less*] **1** *obs* : not yielding rent **2** : rent free **3** : UNRENTABLE

²rentless \"\ *adj* [*²rent* + *-less*] : not torn

rent of assize [*¹rent*] : a fixed rent paid by freeholders or ancient copyholders of an English manor

rent party *n* : a party to which admission is charged with the profits going to pay the host's rent

rent resolute *n, Old Eng law* : crown rents from lands formerly in possession of now dissolved religious bodies

rent-roll \ˈ=ˌ=\ *n* [*¹rent* + *roll*] : a register of rents including the names of tenants and the amounts due; *also* : the total income indicated by such a register

rents *pl of rent, pres 3d sing of* RENT

rent seck *n, pl* **rents seck** [ME *rent sek*, fr. AF *rente sequ*e, lit., dry rent] : a rent reserved or granted like a rent charge orig. not having the right of distress but in England having a power of distress annexed in 1730

rent service *n* [*¹rent*] : rent reserved out of land held by fealty or other corporeal service and under the common law having attached the right of distress

rents, issues, and profits *n pl* : the total wealth or profit either gross or net after the satisfaction of reasonable expenses arising from the ownership or possession of property

rent table *n* : a round or polygonal table made during the second half of the 18th century in England with small drawers often labeled with the days of the week and possibly used for a simple filing system for rent collecting

rent table

re·number \(ˈ)rē+\ *vt* [ME *renombren*, fr. *re-* + *nombren* to number] : to number again (as with different numbers) ⟨~ the street⟩ ⟨~ pages 15 to 34⟩

¹re·nun·ci·ant \rə'nən(t)sēənt\ *n -s* [L *renuntiant-, renuntians*, pres. part. of *renuntiare* to renounce — more at RENOUNCE] : one who renounces (as the world)

²renunciant \"\ *adj* [L *renuntiant-, renuntians*] : RENUNCIATIVE

re·nun·ci·a·tion \rəˌnənˌsēˈāshən, rēˌ- *sometimes* -ˌnonchē-\ *n -s* [ME, fr. L *renuntiation-, renuntiatio*, fr. *renuntiatus* (past part. of *renuntiare* to renounce) + *-ion-, -io*, -ion — more at RENOUNCE] **1** : the act or practice of renouncing : SACRIFICE, REJECTION, REPUDIATION ⟨the ~ of a title⟩ ⟨a ~ of ambitions⟩ ⟨made a ~ of his chairmanship⟩; *specif* : ascetic self-denial ⟨a life of complete ~ . . . as a nun —C.C.Cregan⟩ **2** *Brit* : a legal document by which a person appointed in a will to be its executor or a person preferentially entitled to administer the estate of an intestate renounces his right

re·nun·ci·a·tive \ˈ=ˌād·iv\ *adj* [L *renuntiatus* + E *-ive*] : marked by or expressive of renunciation

re·nun·ci·a·to·ry \ˈ=ə,tōrē\ *adj* [L *renuntiatus* + E *-ory*] : of or relating to renunciation : RENUNCIATIVE

¹ren·verse \ren'vərs\ *vt* -ED/-ING/-S [MF *renverser*, fr. *re-* + *enverser* to invert, fr. OF, fr. *envers* upside down, fr. L *inversus* — more at INVERSE] *archaic* : to turn back : REVERSE, OVERTURN, OVERTHROW

²ren·ver·sé \ˌrānˌver¦sā\ *adj* [F, lit., turned back, fr. past part. of *renverser* to turn back, fr. MF] : consisting of or accompanied by a bending of the head and body from the waist while turning in ballet : REVERSED ⟨a ~ movement⟩

ren·verse·ment \ren'vərsmənt\ *n -s* [F, reversal, inversion, fr. MF, fr. *renverser* to turn back, turn over + *-ment* — more at RENVERSE] : an airplane maneuver consisting of a half-roll followed by a half-loop

ren·voi \ren'vȯi\ *n -s* [F, act of sending back, reference, fr. MF, fr. *renvoyer* to send back, fr. OF, fr. *re-* + *envoyer, envoier* to send — more at ENVOY] **1** : the return by a government of an alien to his own country **2** : the reference of a matter involving a conflict of jurisdiction in private international law to the law or courts of a jurisdiction other than the local jurisdiction involved

re·occupy \(ˈ)rē+\ *vt* [*re-* + *occupy*] : to occupy again

re·occur \rē+\ *vi* [*re-* + *occur*] : to occur again

re·occurrence \"+\ *n* [*re-* + *occurrence*] : a second or another occurrence

re·odorization \(ˌ)rē+\ *n* : the act or process of reodorizing or the state of being reodorized

re·odorize \(ˈ)rē+\ *vt* [*re-* + *odorize*] : to change the odor of — compare DEODORIZE

re·open \(ˈ)rē+\ *vb* [*re-* + *open*] *vt* **1** : to open again ⟨~*ed* his eyes⟩ ⟨~*ed* the school⟩ **2 a** : to take up again : RESUME ⟨the right to ~ discussion of matters affecting international peace —Vera M. Dean⟩ **b** : to resume the discussion or consideration of (a closed matter) ⟨~ the contract to discuss wages —*Wall Street Jour.*⟩ **c** : to try or hear (a legal suit or action) anew esp. for the purpose of hearing new evidence **3** : to begin again ⟨~ fire⟩ ⟨~ hostilities⟩ ~ *vi* : to open again; *specif* : to resume operations after an interruption or suspension ⟨the store ~*ed* after a one-week shutdown⟩

re·opener \"+\ *n* : REOPENING CLAUSE

reopening clause *n* : a clause in a collective bargaining contract providing for a reconsideration of an issue (as wages) during the life of the contract

¹re·order \(ˈ)rē+\ *vb* [*re-* + *order*] *vt* **1** : to order again or anew : arrange in a different way : REORGANIZE ⟨our greatest opportunity to ~ our city patterns —Charles Abrams⟩ **2** : to give a reorder for ⟨~*ed* two dozen blouses of the same style⟩ ~ *vi* : to place a reorder ⟨when I sell these, I'll ~⟩

²reorder \"\ *n* : an order for the same goods previously ordered from a particular firm or supplier

re·ordination \(ˌ)rē+\ *n* [LL *reordination-, reordinatio*, fr. *reordinatus* (past part. of *reordinare* to ordain again, fr. L *re-* + LL *ordinare* to ordain) + L *-ion-, -io* -ion — more at ORDAIN] : a second or repeated ordination

re·organization \"+\ *n* **1** : the act of reorganizing or the state of being reorganized ⟨a thorough-going ~ of our entire body of subject-matter along new lines —*School & Society*⟩ **2 a** : the rehabilitation of the finances of a business concern under procedures prescribed by federal bankruptcy legislation **b** : any of various procedures (as recapitalizations or mergers) that affect the tax structure of a corporation under federal income tax legislation **3** : the alteration of the existing structure of governmental units (as bureaus or legislative committees) and the lines of control and authority between them usu. to promote greater efficiency and responsibility

re·organize \(ˈ)rē+\ *vb* [*re-* + *organize*] *vt* : to organize again or anew : change the organization of ⟨~ the department to increase efficiency⟩ ~ *vi* : to effect a reorganization ⟨with the option then to continue, suspend, or ~ —W.Z.Ripley⟩ — **re·organizer** \"+\ *n*

re·orient \"+\ *vt* [*re-* + *orient*] : to orient again or anew : change the orientation of ⟨suggests that American institutions of higher learning ~ their programs to include professional or vocational training for all —H.J.Carman⟩

re·orientate \"+\ *vt* [*re-* + *orientate*] : REORIENT

re·orientation \(ˌ)rē+\ *n* [*re-* + *orientation*] : a changed orientation ⟨a ~ of attitudes toward this part of the world —Robert Trumbull⟩

⁴rep \"\ *n -s* [short for *²representative*] : REPRESENTATIVE; *specif* : a cowboy who rides in a roundup as the representative of a particular ranch ⟨a ~ from each ranch in the area would see that everything was done fair and square —S.E.Fletcher⟩

⁵rep \"\ *vi* **repped; repped; repping; reps** : to act as a rep in a roundup ⟨inquired what brand we were *repping* for —Emma Yates⟩

⁶rep \"\ *n -s* [by shortening] : REPERTORY

⁷rep \"\ *or* **rep unit** *n, pl* **rep** *or* **reps** [*rep* fr. *roentgen equivalent physical*] : the dosage of any ionizing radiation that will develop the same amount of energy upon absorption in human tissues as one roentgen of X-ray or gamma-ray dosage — compare REM

rep *abbr* **1** repair **2** repeat **3** report; reported; reporter **4** republic; republican

re·pack \(ˈ)rē+\ *vt* [ME *repakken*, fr. *re-* + *pakken* to pack] : to pack again or anew; *specif* : to put into a different container ⟨~*ed* tomatoes⟩

re·package \"+\ *vt* [*re-* + *package*] : to package again or anew; *specif* : to put into a more efficient or attractive form

¹re·paint \"+\ *vt* [*re-* + *paint*] : to paint again or anew ⟨figures of the past whom I should like to ~ for this generation —H.J.Laski⟩ ⟨~ the house⟩; *specif* : to paint over (part of a picture) ⟨the painting turned up again heavily ~*ed*—*Time*⟩

²re·paint \ˈrē+ˌ-, ˌ=ˈ=\ *n* **1** : the fact of having been repainted ⟨is marred by a clumsy ~⟩ **2** : something repainted

¹re·pair \rə'pa(ə)r(ə)r, rē'p-, -pe|, |ə\ *vi* -ED/-ING/-S [ME *repairen*, fr. MF *repairer, repairier* to return, go back to one's own country, dwell, fr. OF *repairier*, fr. LL *repatriare* to go back to one's own country, fr. L *re-* + LL *-patriare* (fr. L *patria* native country) — more at EXPATRIATE] **1 a** : to betake oneself : GO ⟨summoned me to ~ immediately to the lobby —Horace Sutton⟩ **b** : to go habitually : RESORT ⟨sacred trees to which they ~ at various times, but especially before harvest —J.G.Frazer⟩ **c** : to go to a specified place for a specified purpose ⟨~ to the second-floor cafe to drink tea and coffee —C.S.Coon⟩ ⟨~*ing* to their villages in the rainy season to plant their plots —R.H.Lowie⟩ **d** : to go for the purpose of assembling : RALLY ⟨raise a standard to which the wise and honest can ~ —George Washington⟩ ⟨a standard of ethical professional conduct to which all architects of good will might ~ —G.B.Cummings⟩ **2** *obs* : RETURN ⟨all to Athens back again ~ —Shak.⟩

²repair \"\ *n -s* [ME *repair, repaire*, fr. MF *repaire* return, dwelling, fr. OF, fr. *repairier*, v.] **1** : the act or fact of repairing to a place : RESORT ⟨as the day gets warm, ~ is had to the shade of a tree —James Stevenson-Hamilton⟩ **2** *chiefly Scot* : a concourse esp. of people : FLOCKING **3** : a place of resort : HAUNT ⟨his house became a ~ for rising politicians⟩

³repair \"\ *vb* -ED/-ING/-S [ME *repairen, reparen*, fr. MF *reparer*, fr. L *reparare*, fr. *re-* + *parare* to prepare — more at PARE] *vt* **1 a** : to restore by replacing a part or putting together what is torn or broken : FIX, MEND ⟨so neatly ~*ed* that he could see no trace of the once familiar rents —T.B.Costain⟩ ⟨~ a house⟩ ⟨~ a shoe⟩ **b** : to restore to a sound or healthy state : RENEW, REVIVIFY ⟨~ his strength⟩ ⟨resume his law practice in order to ~ his private fortune —E.M.Coulter⟩ ⟨~ the tissues of the body⟩ **2** : to make good : REMEDY ⟨the material and moral damage took long to ~ —Jacquetta & Christopher Hawkes⟩ ⟨~ the lack of early education —E.H. Collis⟩ ⟨will ~ his ignominious failure —Bernard DeVoto⟩ **3** : to make up for : compensate for ⟨~ an insult⟩ ⟨~ an injustice⟩ ~ *vi* : to make repairs **syn** see MEND

⁴repair \"\ *n -s* **1 a** : the act or process of repairing : restoration to a state of soundness, efficiency, or health ⟨the boat was beyond ~⟩ ⟨a thorough ~ of the crazy fabric of human nature —T.L.Peacock⟩ **b** : an instance or result of repairing ⟨the coat needed only a simple ~⟩ ⟨made a few ~*s* to the stairs where some boards had come loose⟩ ⟨the ~ to the rug was evident to the eye⟩ **c** : the replacement of destroyed cells or tissues by new formations **2 a** : relative condition with respect to soundness or need of repairing ⟨the car is in reasonably good ~⟩ ⟨the building is in poor ~⟩ **b** : the state of being in good or sound condition ⟨the house is in ~⟩ ⟨the house is out of ~⟩ ⟨his judgment was in constant ~ —F.A.Swinnerton⟩ **3 repairs** *pl* : the portion of maintenance charges expended to keep fixed assets in adequate and efficient operating condition and recorded on the books as expense — contrasted with *renewal* and *replacement*

re·pair·able \-pa(ə)rəbəl, -per-\ *adj* : capable of being repaired

re·pair·er \-pa(ə)rə(r), -perə-\ *n -s* : one that repairs; *specif* : one whose work is repairing ⟨shoe ~⟩ ⟨watch ~⟩

re·pair·man \-pa(ə)rmən, -per-\ *n, pl* **repairmen** : one who repairs; *specif* : one whose occupation is to make repairs or readjustments in a mechanism ⟨a typewriter ~⟩ ⟨a radio ~⟩

repair ship *n* : a naval auxiliary vessel fitted with shops for the handling of repairs to naval vessels

repair shop *n* : an establishment where repairs are made ⟨a small *repair shop* that mends all sorts of items⟩

re·pand \rə'pand, rē'p-\ *adj* [L *repandus* bent backward, turned up, fr. *re-* + *pandus* bent, crooked; akin to ON *fattr* bent backward and perh. to L *pandere* to spread — more at FATHOM] *of a leaf* : having a slightly undulating margin

rep·a·ra·ble \'rep(ə)rəbəl *also* ÷ *like* REPAIRABLE\ *adj* [L *reparabilis*, fr. *reparare* to repair + *-bilis* -able] **1** : capable of being mended or put into sound condition : REPAIRABLE ⟨when inspected parts are found defective but ~ —G.J.Stegemerten⟩ **2** : capable of being remedied or made good ⟨~ damage⟩

rep·a·ra·tion \ˌrepəˈrāshən\ *n -s* [ME *reparacioun*, fr. MF *reparation*, fr. LL *reparation-, reparatio*, fr. L *reparatus* (past part. of *reparare* to repair) + *-ion-, -io* -ion — more at REPAIR] **1 a** : the act or process of mending or restoring : a repairing or keeping in repair ⟨the ~ of wasted tissue⟩ ⟨a church in need of constant ~⟩ **b reparations** *pl* : REPAIRS **2 a** : the act of making amends, offering expiation, or giving satisfaction for a wrong or injury ⟨the treatment may consist of ~ to and propitiation of the offended spirit —*Notes & Queries on Anthropology*⟩ **b** : something done or given as amends or satisfaction ⟨was educated in France at royal expense as ~ for the death of his father —H.C.Nixon⟩ **3** : the payment of damages : INDEMNIFICATION; *specif* : compensation in money or in materials (as commodities or capital equipment) payable by a defeated nation as war indemnity for direct damages to or expenditures sustained by another nation as a result of hostilities with the defeated nation — usu. used in pl. ⟨extract maximum ~*s* by dismantling and transferring plants —Karl Loewenstein⟩

re·par·a·tive \rə'parəd·iv, rē'p-\ *adj* [LL *reparativus*, fr. L *reparatus* (past part. of *reparare*) + *-ivus* -ive] **1** : of, relating to, or effecting repair **2** : serving to make amends ⟨does a fine ~ job for several neglected poets —George Dillon⟩

re·par·a·to·ry \-arəˌtōrē\ *adj* [fr. *reparative*, after such pairs as E *preparative: preparatory*] : REPARATIVE

¹rep·ar·tee \ˌrepə(r)'tē, -ˌpär't-, -pä't-, -tā\ *n -s* [F *repartie*, fr. *repartir* to retort, fr. MF, fr. *re-* + *partir* to divide, go away — more at PART] **1 a** : a quick and witty reply : a clever retort ⟨won the applause of the audience with his ~ to a heckler⟩ **b** : a succession of clever retorts ⟨beneath the surface of ~ and mock seriousness —R.M.Weaver⟩ ⟨the constant ~ is artificial and wearying⟩ **2** : adroitness and cleverness in reply : quickness and sharpness in retort ⟨was noted for his ~ and impromptu wit⟩ **3** : the uttering of clever retorts ⟨her skill at ~ has made her many enemies⟩ **syn** see WIT

²repartee \"\ *vi* **reparteed; reparteed; reparteeing; repartees** : to make or be able to make clever retorts

re·par·ti·mi·en·to \rəˌpärd·əmē'en·(ˌ)tō, ˌrāˌpärd·əm'yen-·\ *n -s* [AmerSp, fr. Sp, distribution, fr. *repartir* to distribute (fr. *re-* — fr. L — + *partir* to divide, fr. L *partire, partiri*) + *-miento* -ment (fr. L *-mentum*) — more at PART] : a grant or

... the tongue of a wagon, of Scand origin; akin to Norw dial. *neip* forked stick, hayfork, Icel *neip* space between two fingers, ON *hnippa* to prod — more at NIP] *NewEng* : the tongue of a cart

neaped *adj* [fr. past part. of 2*neap*] : left aground by the high water of a spring tide : STRANDED, GROUNDED

1**ne·a·pol·i·tan** \ˌnēəˈpälətᵊn *also* -ətən *or* -əd·ən\ *adj, usu cap* [L *neapolitanus*, fr. Gk *neapolitēs* citizen of Naples (fr. *Neapolis* Naples + *-itēs* -ite) + L *-anus* -an] : of, relating to, or characteristic of Naples, Italy, or its residents

2**neapolitan** \"\ *n* -s **1** *cap* : a native or resident of Naples, Italy **2** *usu cap* : NEAPOLITAN ICE CREAM

neapolitan ice cream *n, usu cap N* : a brick of from two to four layers of ice cream of different flavors usu. including lemon ice or orange ice

neapolitan mandolin *n, usu cap N* : a mandolin having four pairs of strings — compare MILANESE MANDOLIN

neapolitan ointment *n, usu cap N* : MERCURIAL OINTMENT

neapolitan sixth *n, usu cap N* : the first inversion of the major triad formed on the lowered second degree of the musical scale

neapolitan yellow *n, often cap N* : NAPLES YELLOW

neap rise *n* : the difference in level between low water at spring tide and high water at neap tide

neap tide *also* **neap** *n* -s : a tide of minimum range occurring at the first and the third quarters of the moon — compare SPRING TIDE

1**near** *adv* [ME *ner, nere*, fr. OE *nēar* — more at 2NEAR] *obs* : NEARER

2**near** \ˈni(ə)r, -iə\ *adv* -ER/-EST [ME *ner, nere*, partly fr. *ner, nere* nearer, fr. OE *nēar*, comparative of *nēah* nigh; partly fr. ON *nær* nearer, near, comp. of *nā-* near — more at NIGH] **1** : at, within, or to a short distance ⟨don't shoot until they come ~⟩ or a short time ⟨sunset was drawing ~⟩ ⟨getting ~*er* to the true explanation⟩ **2** : within little : ALMOST, NEARLY ⟨~ exhausted by the heat⟩ ⟨dark brown coming ~ to black⟩ ⟨not ~ so many⟩ ⟨came ~ to being the best speller in the class⟩ **3 a** : CLOSELY ⟨copy it as ~ as you can⟩ ⟨*near*-related terms⟩ ⟨*near*-actual mock battle⟩ **b** : INTIMATELY ⟨~ allied unto the duke —Shak.⟩ **4** : THRIFTILY, STINGILY

3**near** \"\ *prep* [ME *ner, nere*, fr. *ner, nere* adv.] : not far distant from esp. in place, time, or degree : close to ⟨bombs fell ~ the building⟩ ⟨several beaches ~ the city⟩ ⟨came home ~ midnight⟩ ⟨seemed to be ~ death⟩ ⟨was in a state ~ collapse⟩

4**near** \"\ *adj* -ER/-EST [ME *ner, nere*, fr. *ner, nere*, adv.] **1 a** : closely akin ⟨~ relative⟩ **b** : closely or intimately related or associated ⟨~ relations⟩ ⟨~ affairs⟩ ⟨his ~*est* and dearest friend⟩ **2 a** : not far distant in time, place, or degree ⟨in the ~ future⟩ ⟨his ~*est* approach to success⟩ : ADJACENT, NIGH ⟨saw only his ~*est* neighbors⟩ ⟨hunting rabbits in the ~ fields⟩ **b** : that barely avoids, passes, or misses ⟨~ disaster⟩ ⟨~ miracle⟩ : CLOSE, NARROW ⟨he won the match but it was a very ~ thing⟩ **3 a** : being the closer of two ⟨~ side of the mountain⟩ — opposed to *far* **b** : being the left-hand one of a pair ⟨~ horse⟩ ⟨~ hind foot⟩ ⟨~ wheel of a cart⟩ — opposed to *off* **4** : DIRECT, SHORT — used chiefly in the comparative or superlative ⟨four miles by the ~*est* road⟩ **5** : CLOSEFISTED, PARSIMONIOUS, STINGY **6 a** : closely resembling or following ⟨a version very ~ the original⟩ **b** : approaching closely in extent or degree ⟨~ equivalent⟩ ⟨the ~*est* thing to perfect happiness⟩ **c** : approximating the genuine ⟨~ silk⟩ — often used in combination ⟨*near*-antique⟩

5**near** \"\ *vb* -ED/-ING/-S [2*near*] *vi* : to come closer in space or time ⟨every year when the baseball season ~*s*⟩ ~ *vt* : to draw near to : APPROACH ⟨ship was ~*ing* the dock⟩

6**near** *var of* NEER

nearabout \ˈ=ˌ=ˈ=\ *also* **nearabouts** \ˈ=ˌ=ˈ=\ *adv* [*nearabout* fr. 2*near* + *about*; *nearabouts* fr. 2*near* + *about* + *-s*] *chiefly South & Midland* : NEARLY, ALMOST

near–at–hand \ˈ=ˌ=ˈ=\ *adj* [fr. *near at hand*, adv. phrase, fr. ME *nere at hand*] : NEARBY ⟨lumber from *near-at-hand* sources⟩ : IMMEDIATE ⟨concerned mostly with *near-at-hand* problems⟩

near beer *n* : any of various malt liquors resembling beer but considered nonalcoholic because containing less than ½ percent alcohol

1**nearby** \ˈ=ˈ=\ *adv* [ME *nerby, nere by*, fr. *ner, nere* near + *by*, adv.] **1** : near at hand : close by ⟨~ flows a river⟩ ⟨plane lands ~⟩ **2** *Scot* : NEARLY, THEREABOUTS ⟨sixty miles or ~⟩

2**nearby** \"\ *prep* [ME *nerby, nereby*, fr. *nerby, nere by*, adv.] : close to : hard by : NEAR ⟨put up attractive churches ~ a university —W.L.Sperry⟩

3**nearby** \"\ *adj* [1*nearby*] : being or set close at hand : ADJACENT, NEIGHBORING ⟨water from a ~ river⟩

4**nearby** \ˈ=ˌ=\ *n* -s : something produced in the neighborhood — usu. used in pl. ⟨steady market on . . . colored eggs . . . but ~*s* were weaker —*Jour. of Commerce*⟩

ne·arctic \(ˈ)nē+\ *adj, usu cap* [*ne-* + *arctic*] : of, relating to, or being the biogeographic subregion that includes Greenland, arctic America, and the northern and mountainous parts of No. America and that is now usu. considered a subdivision of the Holarctic region

near eastern *adj, usu cap N&E* : of, relating to, or concerned with the countries of the Near East — used orig. of the Balkan States, later of the region included in the Ottoman Empire, and now often of all the countries of southeastern Europe, No. Africa, and southwestern Asia, sometimes including the entire area extending from Libya or Morocco, Ethiopia, and Somalia to Greece, Turkey, Iran, Afghanistan, and sometimes India; compare FAR EASTERN, MIDDLE EASTERN

near–fall \ˈ=ˈ=\ *n* : a wrestling fall scoring usu. two points and achieved by pinning both shoulders to the mat for more than one but less than two seconds or by holding both shoulders to within two inches of the mat for at least two seconds

1**near hand** *adv* [ME *nerhand, nerehand*, fr. *ner, nere* near + *hand*] *chiefly Scot* **1** : close by **2** : ALMOST, NEARLY

2**near hand** *prep* [ME *nerhand, nerehand*, fr. *nerhand, nerehand*, adv.] *chiefly Scot* : close to : next to : NEAR

3**near hand** *adj* [1*near hand*] *chiefly Scot* : ADJACENT, NEAR

near·ish \ˈni(ə)rish, -rēsh\ *adj* [4*near* + *-ish*] : rather near ⟨not really miserly, but ~⟩ ⟨a ~ escape from serious injury⟩

near–legged *U S usu* ˈ=ˌlegəd, *Brit usu* -gd\ *adj, of a horse* : having the two fore or two hind legs set close together; *esp* : having them so near that the feet interfere

near·ly \ˈni(ə)rlē, -iəlē, -li\ *adv, sometimes* -ER/-EST [4*near* + *-ly*] **1** : at close range : with careful scrutiny **2 a** : closely as to relationship, personal connection, or interest ⟨~ related⟩ : PARTICULARLY ⟨other things that concerned me more ~ to think of —W.H.Hudson †1922⟩ ⟨~ acquainted⟩ **b** : closely as to similarity ⟨~ identical⟩ ⟨two cities . . . grown to a status so ~ equal —*Amer. Guide Series: Minn.*⟩ **c** : with an approach to completeness or exactness : APPROXIMATELY ⟨such words are ~ meaningless⟩ ⟨lying ~ at right angles⟩ **d** *archaic* : closely as to location ⟨some danger does approach you ~ —Shak.⟩ **3** : within a little : all but : ALMOST ⟨~ a year later⟩ ⟨~ a hundred dollars⟩ ⟨~ missed the train⟩

near–miss \ˈ=ˈ=\ *n* : a miss (as with a bomb) close enough to the target to cause damage; *broadly* : something that falls just short of complete success

near–money \ˈ=ˌ==\ *n* : demand or short-term obligations easily converted into cash or bank deposits : liquid assets

... extending seaward or lakeward an indefinite but generally short distance from a shore ⟨~ deposits⟩ ⟨~ current⟩

nearside \ˈ=ˌ=\ *adj* [so called fr. the custom of approaching, mounting, or leading horses and cattle from the left side] *chiefly Brit* : being on the left-hand side ⟨never quite knows where his ~ wheels are —*New Statesman & Nation*⟩

nearsighted \ˈ=ˌ==\ *adj* : seeing distinctly at short distances only : affected with myopia : SHORTSIGHTED, MYOPIC

near·sight·ed·ly *adv* : in a nearsighted manner ⟨peered ~ at the visitor —Josephine Pinckney⟩

near·sight·ed·ness *n* -ES **1** : the quality or state of being nearsighted **2** : MYOPIA

ne·ar·thro·sis \ˌnē+\ *n* [NL, fr. *ne-* + *arthrosis*] : a false joint : PSEUDARTHROSIS

near wilt *n* : a disease of peas caused by a fungus (*Fusarium oxysporum pisi*) and differing from true wilt in that it is found only on scattered plants, develops more slowly, and causes brick red rather than orange coloration

ne·as·cus \nēˈaskəs\ *n* -ES [NL, fr. *ne-* + Gk *askos* sack, bladder — more at ASCUS] : BLACK GRUB

1**neat** \ˈnēt, *usu* -ēd·+V\ *n, pl* **neat** [ME *net, neet*, fr. OE *nēat*; akin to OHG *nōz* head of cattle, ON *naut*; all fr. a prehistoric NGmc-WGmc noun akin to OE *nēotan* to make use of, enjoy, OHG *niozzan*, ON *njōta*, Goth *niutan*] : the common domestic bovine (*Bos taurus*); *also* : cattle of this or sometimes of other species of the genus *Bos* ⟨~ cattle⟩ ⟨~ stall⟩ ⟨~ leather⟩ ⟨a lion in a herd of ~ —Shak.⟩

2**neat** \"\ *adj* -ER/-EST [MF *net*, fr. L *nitidus* bright, lustrous, neat, fr. *nitēre* to shine; akin to MIr *niam* luster, beauty, OIr *nōib* holy, OPer *naiba-* beautiful] **1** : BRIGHT, SHINING — used chiefly in the phrase *neat as a new pin* **2 a** : free from admixture or adulteration : UNDILUTED ⟨~ brandy⟩ ⟨a remark is not to be taken ~, but watered with the ideas of common sense —O.W.Holmes †1894⟩ **b** : made without sand ⟨~ cement⟩ ⟨~ plaster⟩ **c** *of raw silk* : free from loops, lumps, breaks, or hairiness **3** *obs* : finely or smartly dressed ⟨still to be ~, still to be dressed as if going to a feast —Ben Jonson⟩ **4 a** : free from whatever clutters, blurs, or confuses : having sharp outlines on even, smooth surfaces ⟨~ patch⟩ ⟨~ joint⟩ ⟨~ handwriting⟩ **b** : free from complication or irregularity or contradiction : simply or symmetrically arranged or constituted ⟨~ set of rules⟩ ⟨hated to have her ~ plans upset⟩ ⟨not all human problems have ~ solutions⟩ **c** : achieved or performed with precision and economy of effort : DEFT, ADROIT ⟨~ theft⟩ ⟨a ~ way of carving up a chicken⟩ ⟨mathematics . . . retains the ~ exactness of the surgeon's knife —Bertrand Russell⟩ **d** : CLEVER, INGENIOUS ⟨saw through his ~ little plan⟩ ⟨~ device for shelling peas⟩ **e** : capable of quick and accurate performance ⟨small ~ hands⟩ ⟨a *neat*-fingered worker⟩ **5** : ORDERLY, TIDY ⟨~ housewife⟩ ⟨the cat is ~ in its habits⟩ **6 a** : CLEAR, NET ⟨~ profit⟩ **b** : GRATIFYING ⟨a ~ little fortune⟩ **7** *slang* : WONDERFUL, FINE, ADMIRABLE — used to express general enthusiastic approval ⟨~ bicycle⟩ ⟨we had a ~ time at the circus⟩

syn TIDY, TRIM, TRIG, SNUG, SHIPSHAPE, SPICK-AND-SPAN: NEAT may call forth suggestions of blended clearness and order, particularly the latter, freedom from clutter, jumble, disorder, confusion, complication, or adventitious addition ⟨she could be to the last degree slatternly. Or she could be as *neat* as a pin —Arnold Bennett⟩ ⟨as a rule he was *neat* in his person, but now his clothes were in disorder —W.S.Maugham⟩ ⟨*neat* minds, who prefer things in their proper places, ticketed and pigeon-holed —W.M.Dixon⟩ TIDY now commonly suggests a pleasing neatness and order diligently maintained ⟨he's always *tidy* without being smart; his coat is old and his trousers are uncreased, but they're both clean, and nothing's loose or torn —Richard Harrison⟩ ⟨he told me of his childhood in the *tidy* brick house, and of his mother's passionate orderliness —W.S. Maugham⟩ TRIM suggests neat smartness like that given by clean lines, good proportion, and compact, orderly arrangement ⟨a *trim* clipper ship⟩ ⟨spotless and *trim*, with shining spectacles and a white apron —Eden Phillpotts⟩ ⟨the sward was *trim* as any garden lawn —Alfred Tennyson⟩ TRIG may suggest jaunty neatness ⟨so *trig* in fashionable clothes that he made me feel awkward and uncomfortable —Irving Bacheller⟩ SNUG may suggest trim neatness with compact order in stowage and fine firmness of line and construction ⟨a *snug* little ship⟩ ⟨Farmer Matson reached the *snug* little cabin which was his headquarters —F.V.W.Mason⟩ SHIPSHAPE implies a tidiness and order befitting a ship likely to undergo sudden peril or difficulty ⟨in *shipshape* order⟩ ⟨leaving the account in *shipshape* condition⟩ SPICK-AND-SPAN suggests the brightness and freshness of the completely clean ⟨no spots came on his clothes. No slovenly habits crept upon him. He was always *spick-and-span* —W.A.White⟩ ⟨the automobile owner who likes to keep his car *spick-and-span* between washings —*New Yorker*⟩

3**neat** *vt* -ED/-ING/-S **1** *obs* : to make neat : TRIM, GROOM **2** *obs* : 4NET

4**neat** \ˈnēt, *usu* -ēd·+V\ *adv* : NEATLY

neat·en \ˈnētᵊn\ *vt* **neatened**; **neatened**; **neatening** \-t(ᵊ)niŋ\ **neatens** [2*neat* + *-en*] **1** : to set in order : make neat ⟨~*ing* the books in a low bookcase —E.B.White⟩ **2** : to finish (as a piece of sewing) carefully ⟨oversewing edges to ~ them⟩

neater *comparative of* NEAT

neatest *superlative of* NEAT

neath \ˈnēth, -ēth\ *prep* [by shortening fr. *aneath* & *beneath*] *dial* : BENEATH

neat–handed \ˈ=ˌ==\ *adj* : neat and deft in handling things : DEXTEROUS — **neat–hand·ed·ly** *adv* — **neat–hand·ed·ness** *n* -ES

neat·herd \ˈnētˌhərd, -həd, -əid\ *n* [ME *netherde*, fr. *net* head of cattle + *herde* herdsman — more at NEAT, HERD] : HERDSMAN, COWHERD

neath·most \ˈ=ˌmōst *also chiefly Brit* -məst\ *adj* [*neath* + *-most*] *Scot* : LOWEST

neat line *n* [2*neat*] **1** : the line to which the face of a masonry wall is supposed to conform disregarding minor irregularities **2** : the innermost of a series of lines that frame a map or mechanical drawing

neat·ly *adv* [2*neat* + *-ly*] : in a neat manner ⟨hair ~ combed⟩ : TIDILY ⟨~ kept room⟩ : DEFTLY, CLEVERLY ⟨~ removed the bones from the fish⟩

neat·ness *n* -ES : the quality or state of being neat

neat's–foot oil \ˈ=ˌ=-\ *n* [1*neat*] : a pale yellow fatty oil made by boiling the feet and shinbones esp. of cattle and used chiefly as a leather dressing and fine lubricant

neat soap *n* [2*neat*] : molten soap formed during manufacture esp. after fitting and settling out of nigre and lye and used for making bars, chips, or powders

neb \ˈneb\ *n* -s [ME *neb, nebb*, fr. OE; akin to ON *nef* beak, nose, MLG *nebbe*, and prob. to OHG *snabul* beak] **1** : the beak of a bird or tortoise : BILL; *also* : a person's mouth **2** : something suggestive of a bill esp. in being jutting or pointed; *specif* : NOSE 1 **3** : the pointed or narrowed end of a thing : TIP; *specif* : the point of a pen or pencil **4** : 1EAR 4h

ne·ba·lia \nəˈbālēə\ *n, cap* [NL] : a genus of small marine crustaceans (order Nebaliacea) having the body enclosed in a bivalved carapace, the thoracic feet leaflike, the abdominal feet biramous, and the abdomen composed of eight segments

... of Nebraska (*Nebraska* farme... : of the kind or style prevalent in Nebraska : NEBRASKAN

1**ne·bras·kan** \-kən\ *also* **ne·bras·ki·an** \-kēən\ *adj, usu* ... [*Nebraska* state + E *-an, -ian*] **1** : of, relating to, or char... teristic of Nebraska or Nebraskans **2** : belonging to the fi... glacial stage during the glacial epoch in No. America

2**nebraskan** \"\ *also* **nebraskian** \"\ *n* -s *cap* : a native ... resident of the state of Nebraska

neb·ris \ˈnebrəs\ *n* -ES [L, fr. Gk, fr. *nebros* fawn] : a fa... skin shown in classic art as worn by Dionysus, Silenus, saty... and bacchanals

neb·u·chad·nez·zar \ˌneb(y)əkədˈnezə(r)\ *n* -s *usu cap* [af... *Nebuchadnezzar* II †562 B.C. king of Babylon] : an oversi... wine bottle holding about 20 quarts ⟨a ~ of champagne⟩

neb·u·la \ˈnebyələ\ *n, pl* **nebu·las** \-ləz\ *or* **nebu·lae** \-... -ˌlī\ [NL, fr. L, mist, cloud; akin to OE *nifol* cloudy, dar... OS *nebal* fog, OHG *nebul* fog, ON *njōl* darkness, night, G... *nephelē*, *nephos* cloud, Skt *nabhas* mist] **1 a** : any of ma... immense bodies of highly rarefied gas or dust in the interstell... space of our own Milky Way and other galaxies that wh... located in our own Milky Way may by absorption of lig... from objects farther away be observed as a dark cloud or m... by reflection or reemission of light from associated near... stars be observed as a bright cloud **b** : GALAXY; *specif* : ... galaxy outside the Milky Way galaxy — see PLANETAR... NEBULA, SPIRAL NEBULA **2** : a white spot or a slight opaci... of the cornea **3** : a liquid preparation intended for medicin... spraying

neb·u·lar \-lə(r)\ *adj* [NL *nebula* + E *-ar*] : of or relating t... a nebula : of the nature of or resembling a nebula : CLOUDY

nebular hypothesis *n* : a hypothesis in astronomy: the sola... system has evolved from a hot gaseous nebula

neb·u·lat·ed \ˈnebyəˌlād·əd\ *adj* [LL *nebulatus* (past part. o... *nebulare* to cloud, obscure, fr. L *nebula* mist, cloud) + E *-ed* : indistinctly marked : CLOUDED, CLOUDY

neb·u·lé \ˌnebyəˈlā, -ˈlē\ *also* **neb·u·ly** \ˈnebyəlē\ *adj* [M... *nebulé*, fr. L *nebula* + F *-é* -ate, adj. suffix (fr. L *-atus* -ate) **1** : composed of successive short curves made to resemble ... cloud — used of a heraldic line by which an ordinary or sub... ordinary may be bounded **2** *of a molding* : consisting of a... overhanging band the lower projecting edge of which con... forms in shape to a continuous undulating curve

ne·bu·li·um \nəˈbyülēəm, neˈ-\ *n* -s [NL, fr. *nebula* + *-ium*] : a hypothetical chemical element formerly inferred from certain lines in the spectra of nebulae now believed to arise from transitions in oxygen and nitrogen that are forbidden under ordinary laboratory conditions

neb·u·li·za·tion \ˌnebyələˈzāshən, -ˌlīˈz-\ *n* -s : reduction (as of a medicinal solution) to a mist, spray, or vapor

neb·u·lize \ˈ==ˌlīz\ *vt* -ED/-ING/-S [NL *nebula* + E *-ize*] : to reduce (as a medicinal solution) to a fine spray : AEROSOLIZE — **neb·u·liz·er** \-zə(r)\ *n* -s

neb·u·lose \-ˌlōs\ *adj* [L *nebulosus* — more at NEBULOUS] : NEBULOUS

neb·u·los·i·ty \ˌ==ˈläsəd·ē, -ətē, -i\ *n* -ES [F or LL; F *nébulosité*, fr. LL *nebulositat-*, *nebulositas*, fr. L *nebulosus* + *-itat*, *-itas* -ity] **1** : the quality or state of being nebulous : CLOUDINESS **2** : nebulous matter : NEBULA ⟨faintly luminous ~ is abundant in the vicinity of Orion —R.H.Baker⟩

neb·u·lous \ˈ==ləs\ *adj* [L *nebulosus*, fr. *nebula* mist, cloud + *-osus* -ous, -ose — more at NEBULA] **1** *archaic* : full of clouds : CLOUDY, FOGGY **2 a** : lacking clarity of feature or sharpness of outline : HAZY, INDISTINCT ⟨~ memory⟩ ⟨~ line between confidence and overconfidence —*Wall Street Jour.*⟩ **b** : vaguely defined : poorly grasped : dimly realized ⟨~ hopes and fears⟩ ⟨~ social values —A.H.MacCormick⟩ **3** : not transparent : TURBID, CLOUDED **4** : of, relating to, or resembling a nebula : NEBULAR — **neb·u·lous·ly** *adv* — **neb·u·lous·ness** *n* -ES

nebulous cluster *n* : a cluster of stars containing or enveloped in nebulosity

ne·ca·tor \nəˈkād·ə(r)\ *n* [NL, fr. LL, killer, fr. L *necatus* (past part. of *necare* to kill, fr. *nec-*, *nex* violent death) + *-or* — more at NOXIOUS] **1** *cap* : a common genus of hookworms that have buccal teeth resembling flat plates, that include internal parasites of man and various other mammals, and that are prob. of African origin though first identified in No. America — compare ANCYLOSTOMA **2** -s : any hookworm of the genus *Necator*

nec·es·sar \ˈnesəsər\ *Scot var of* NECESSARY

nec·es·sar·i·an \ˌnesəˈserēən -sa(a)r-, -sār-\ *n or adj* [2*necessary* + *-an*] : NECESSITARIAN

nec·es·sar·i·an·ism \ˌ==ˈ==əˌnizəm\ *n* -s [1*necessarian* + *-ism*] : NECESSITARIANISM

nec·es·sar·i·ly \ˌ==ˈserəlē, -li\ *adv* [ME, fr. *necessary* + *-ly*] **1** : in such a way that it cannot be otherwise : of necessity : INEVITABLY, UNAVOIDABLY ⟨the audience was ~ small⟩ ⟨political philosophy ~ implies the attitude of the philosopher toward politics —Hannah Arendt⟩ ⟨occupying precious space with a ~ lengthy chapter —Peter Heaton⟩ **2** : as a necessary result or consequence ⟨their whole political outlook was ~ determined by this condition —G.L.Dickinson⟩ ⟨inconsistency, flat contradiction, and irrelevance ~ prevent an armed doctrine from achieving great success —D.W.Brogan⟩

nec·es·sar·i·ness \-rēnəs, -rin-\ *n* -ES *archaic* : the quality or state of being necessary : NECESSITY

1**nec·es·sary** \ˈnesəˌserē, -ri, *in rapid speech* ˈnesˌse-\ *n* -ES [ME *necessaries* (pl.), fr. L *necessaria*, fr. neut. pl. of *necessarius* necessary (adj.)] **1 a** (1) **necessaries** *pl* : items (as of food, clothing, shelter, medical care, equipment or furnishing) that cannot be done without : things that must be had (as for the preservation and reasonable enjoyment of life) : ESSENTIALS ⟨was provided with at least the *necessaries* of life⟩ ⟨gave away so much that he could only have kept just enough to keep himself in bare *necessaries* —Flora Thompson⟩ ⟨household *necessaries*⟩; *specif* : such items as are essential to the proper maintenance and support of those (as married women) who are legally dependent or those (as infants, children, the mentally ill) who are legally incompetent (2) : one such essential item ⟨salt is a ~⟩ **b** : whatever is essential for some purpose ⟨supplies of the ~ were hard to come by —Brian James⟩; *esp* : MONEY — used with *the* **2** *chiefly NewEng* : PRIVY 2

2**necessary** \"\ *adj* [ME *necessarie*, fr. L *necessarius*, fr. *necesse* unavoidable, inevitable, necessary (fr. *ne* not + *-cesse*, fr. *cedere* to withdraw) + *-arius* -ary — more at NO, CEDE] **1 a** : that must be by reason of the nature of things : that cannot be otherwise by reason of inherent qualities : that is or exists or comes to be by reason of the nature of being and that cannot be or exist or come to be in any other way : that is determined and fixed and inevitable ⟨death is a ~ feature of the human condition⟩ ⟨it is ~ that a whole be greater than any of its parts⟩ ⟨patience . . . is a ~ mark of the liberal mind —John Dewey⟩ **b** : of, relating to, or having the character of something that is logically required or logically inevitable or that cannot be denied without involving contradiction ⟨a ~ judgment⟩ ⟨a ~ relation between two things⟩ ⟨a ~ truth⟩ ⟨a ~ conclusion⟩ — opposed to *contingent* **c** : that is inevitably fixed or determined or produced by a previous condition of things ⟨a ~ result⟩ ⟨the ~ outcome of the affair⟩ **d** (1) : that is produced in a mechanical way through conditioning (as by previous actions, experiences) so as to be devoid of freedom of the will ⟨a ~ submission to evil⟩ (2) : that is driven by

California Jurisprudence 3d
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Statutes
John Bourdeau, J.D., and Alan J. Jacobs, J.D.

V. Interpretation
B. Application of General Rules of Construction
2. Factors Affecting Determination of Legislative Intent
b. Construction of Statute in Context

Topic Summary Correlation Table References

§ 113. Construction as a whole

West's Key Number Digest

West's Key Number Digest, Statutes k205 to 208

Legislative intent should be gathered from the whole act rather than from isolated parts or words.[1] Courts should thus construe all provisions of a statute together,[2] significance being given when possible to each word, phrase, sentence, and part of the act in pursuance of the legislative purpose.[3] The meaning of a statute may not be determined from a single word or sentence.[4] Its words must be construed in context,[5] keeping in mind the nature and obvious purpose of the statute where they appear[6] so as to make sense of the entire statutory scheme.[7] No part or provision of a statute should be construed as useless or meaningless,[8] and none of its language rendered surplusage.[9] The same rules apply in construing a particular section of a statute when codified.[10]

The courts presume that every word, phrase, and provision of a statute was intended to have some meaning and perform some useful function,[11] and this presumption applies with equal force to words added by amendment.[12] A construction implying that words were used in vain should be avoided.[13] These principles apply with added emphasis to an amendatory statute enacted to abolish an evil or improve a practice prevailing under the earlier statute.[14]

[FN1] People v. Allen, 42 Cal. 4th 91, 64 Cal. Rptr. 3d 124, 164 P.3d 557 (2007); People v. Hammer, 30 Cal. 4th 756, 134 Cal. Rptr. 2d 590, 69 P.3d 436 (2003); People v. Cottle, 39 Cal. 4th 246, 46 Cal. Rptr. 3d 86 138 P.3d 230 (2006).

[FN2] Turner v. Board of Trustees, 16 Cal. 3d 818, 129 Cal. Rptr. 443, 548 P.2d 1115 (1976); Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222, 110 Cal. Rptr. 144, 514 P.2d 1224 (1973); People v. Spark, 121 Cal. App. 4th 259, 16 Cal. Rptr. 3d 840 (5th Dist. 2004).

[FN3] Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 81 Cal. Rptr. 2d 471, 969 P.2d 564 (1999); Garcia v. McCutchen, 16 Cal. 4th 469, 66 Cal. Rptr. 2d 319, 940 P.2d 906 (1997); People v. Kirk, 141

Cal. App. 4th 715, 46 Cal. Rptr. 3d 258 (4th Dist. 2006).

[FN4] Tonya M. v. Superior Court, 42 Cal. 4th 836, 69 Cal. Rptr. 3d 96, 172 P.3d 402 (2007); Commission On Peace Officer Standards And Training v. Superior Court, 42 Cal. 4th 278, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007); Troppman v. Valverde, 40 Cal. 4th 1121, 57 Cal. Rptr. 3d 306, 156 P.3d 328 (2007).

[FN5] Tonya M. v. Superior Court, 42 Cal. 4th 836, 69 Cal. Rptr. 3d 96, 172 P.3d 402 (2007); Commission On Peace Officer Standards And Training v. Superior Court, 42 Cal. 4th 278, 64 Cal. Rptr. 3d 661, 165 P.3d 462 (2007).

[FN6] Los Angeles County Metropolitan Transp. Authority v. Alameda Produce Market, LLC, 52 Cal. 4th 1100, 133 Cal. Rptr. 3d 738, 264 P.3d 579 (2011); People v. Brookfield, 47 Cal. 4th 583, 98 Cal. Rptr. 3d 535, 213 P.3d 988 (2009); Gardenhire v. Superior Court, 127 Cal. App. 4th 882, 26 Cal. Rptr. 3d 143 (6th Dist. 2005), as modified, (Apr. 21, 2005).

[FN7] Bonnell v. Medical Bd. of California, 31 Cal. 4th 1255, 8 Cal. Rptr. 3d 532, 82 P.3d 740 (2003); Flannery v. Prentice, 26 Cal. 4th 572, 110 Cal. Rptr. 2d 809, 28 P.3d 860 (2001); People v. Connor, 115 Cal. App. 4th 669, 9 Cal. Rptr. 3d 521 (6th Dist. 2004).

[FN8] Los Angeles County v. Frisbie, 19 Cal. 2d 634, 122 P.2d 526 (1942); New United Motors Mfg., Inc. v. Workers' Comp. Appeals Bd., 141 Cal. App. 4th 1533, 47 Cal. Rptr. 3d 200 (1st Dist. 2006).

[FN9] Lopez v. Superior Court, 50 Cal. 4th 1055, 116 Cal. Rptr. 3d 530, 239 P.3d 1228 (2010); McCarther v. Pacific Telesis Group, 48 Cal. 4th 104, 105 Cal. Rptr. 3d 404, 225 P.3d 538 (2010).

[FN10] Dempsey v. Market Street Ry. Co., 23 Cal. 2d 110, 142 P.2d 929 (1943); Zorro Inv. Co. v. Great Pacific Securities Corp., 69 Cal. App. 3d 907, 138 Cal. Rptr. 410 (4th Dist. 1977).

[FN11] Clements v. T. R. Bechtel Co., 43 Cal. 2d 227, 273 P.2d 5 (1954); In re S.H., 197 Cal. App. 4th 1542, 129 Cal. Rptr. 3d 796 (1st Dist. 2011); People v. Mays, 148 Cal. App. 4th 13, 55 Cal. Rptr. 3d 356 (4th Dist. 2007).

[FN12] People v. Kozden, 36 Cal. App. 3d 918, 111 Cal. Rptr. 826 (4th Dist. 1974).

[FN13] Prager v. Isreal, 15 Cal. 2d 89, 98 P.2d 729 (1940); Tidewater Oil Co. v. Workers' Comp. Appeals Bd., 67 Cal. App. 3d 950, 137 Cal. Rptr. 36 (1st Dist. 1977).

[FN14] Thomas v. Driscoll, 42 Cal. App. 2d 23, 108 P.2d 43 (2d Dist. 1940).

CAJUR STATUTES § 113

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