

## Statewide Cost Estimate

**\$376,304**

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

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

### *Developer Fees*

02-TC-42

Clovis Unified School District, Claimant

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## STAFF ANALYSIS

### Background and Summary of the Mandate

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

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

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

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

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<sup>1</sup> Exhibit A.

city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

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

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

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

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

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

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

#### Eligible Claimants and Period of Reimbursement

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

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

## **Reimbursable Activities**

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

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

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

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

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

### **C. Fee Amount**

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

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

### **D. Fund Accounting**

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

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

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

## Statewide Cost Estimate

### Assumptions

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

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

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

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

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

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

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

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

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

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

## Methodology

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

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

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

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

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

### **Conclusion**

On April 19, 2013, the Commission adopted the statewide cost estimate of **\$376,304** for costs incurred in complying with the *Developer Fees* program.

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

<sup>5</sup> Exhibit B

Adopted: April 19, 2013

## **STATEWIDE COST ESTIMATE**

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5,  
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### *Developer Fees*

02-TC-42

Clovis Unified School District, Claimant

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Adopted: May 25, 2012

## **PARAMETERS AND GUIDELINES**

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

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Statutes 1986, Chapters 136 and 887, Statutes 1994, Chapter 1228

### *Developer Fees* 02-TC-42

#### **I. SUMMARY OF THE MANDATE**

This program addresses activities required as a condition of imposing developer fees to help pay for school facilities. There are three developer fee programs at issue in this program which are commonly referred to as: the School Facilities Act of 1979, AB 2926, and the Mitigation Fee Act.

On December 1, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
  - 1) Conditions of overcrowding exists in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
  - 2) All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible methods for reducing those conditions exist.
- Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.
- Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

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



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

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

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

## **II. ELIGIBLE CLAIMANTS**

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

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Clovis Unified School District filed the test claim on June 23, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

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

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

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

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

### C. Fee Amount

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

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

### D. Fund Accounting

If a school district receives funds pursuant to the School Facilities Act of 1979<sup>1</sup>:

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

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

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<sup>1</sup> Not to be confused with the Leroy Greene School Facilities Act.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

### B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The test claim statement of decision and final staff analysis for the parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

Hearing: April 19, 2013

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**Item \_\_\_**  
**Draft Staff Analysis**  
**Proposed Statewide Cost Estimate**  
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*Developer Fees*

02-TC-42

Clovis Unified School District, Claimant

**STAFF ANALYSIS**

**Background and Summary of the Mandate**

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

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

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

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

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

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

#### Eligible Claimants and Period of Reimbursement

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

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



## Reimbursable Activities

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

### A. Local Government Notice of Finding

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

### B. Schedule of Fees

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

### C. Fee Amount

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

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

### D. Fund Accounting

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

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

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

## Statewide Cost Estimate

### Assumptions

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

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

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

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

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

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

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

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

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

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

## Methodology

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

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

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

### **Staff Recommendation**

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

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