

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 17213.1, and 17215.5 (former § 39006)
Statutes 1996, Chapter 509; Statutes 1999, Chapter 1002;
Statutes 2000, Chapters 135 and 443

Acquisition of Agricultural Land for a School Site
(98-TC-04, amended by 01-TC-03)

Brentwood Union School District, Claimant

Table of Contents

Executive Summary/Staff Analysis	1
Exhibit A	
<i>Acquisition of Agricultural Land for a School Site</i> test claim, July 22, 1998.	101
Amendment to test claim, September 18, 2001	161
Exhibit B	
Department of Finance comments submitted January 26, 1999	225
Department of Finance comments submitted December 5, 2001	231
Exhibit C	
Draft Staff Analysis issued July 28, 2004	239
Exhibit D	
Senate Committee on Education, Analysis of Assembly Bill No. 1724 (1995-96 Reg. Sess.) as amended June 12, 1996.	259
Office of the Legislative Analyst, analysis of Proposition 1A, Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998.	262
Conference Report on Senate Bill No. 162 (1999-2000 Reg. Sess.) as amended July 12, 1999.	267
School Facility Program Guidebook, selected pages.	271
School Site Selection and Approval Guide, selected pages.	293
<i>People v. Oken</i> (1958) 159 Cal. App. 2d 456.	313
<i>Freedom Newspapers v. Orange Co. Employees Retirement</i> (1993) 6 Cal.4th 829	318
<i>Prescott v. United States</i> , (1984) 731 F.2d 1388.	331
71 Opinions Attorney General of California 332 (1988).	337
<i>Town of Atherton v. Superior Court of San Mateo</i> , (1958) 159 Cal.App. 2d 417.	345
<i>City of Santa Clara v. Santa Clara Unified School Dist.</i> (1971) 22 Cal.App. 3d 152. ..	354
<i>State Farm Mutual Automobile Ins. Co. v. Garamendi</i> (2004) 32 Cal.4th 1029.	362
<i>Topanga Assoc. for a Scenic Comm. v. County of Los Angeles</i> (1974) 11 Cal.3d 506. .	374
<i>Desmond v. County of Contra Costa</i> (1993) 21 Cal. App. 4th 330.	386
Exhibit E	
Claimant comments submitted August 19, 2004	395

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EXECUTIVE SUMMARY

The test claim statute requires a school district, before acquiring property for a new schoolsite in an area designated for agricultural use and zoned for agricultural production, to make specified findings regarding consultation with other local agencies, evaluation of the site, and minimization of public health and safety issues resulting from neighboring agricultural uses. A separate test claim statute requires that if a school district wishes to apply for state funds under the Leroy F. Greene School Facilities Act of 1998, it must perform a number of specified activities, as discussed below.

Staff finds that the test claim statutes, Education Code sections 17215.5 and 17213.1, do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This conclusion is based on the following findings:

- For Education Code section 17215.5, the specified findings the school district must make if the proposed school site is on land zoned for agricultural use is not state-mandated because the decision to build a school, as well as where to locate it, including the acquisition of agricultural land for a school, is a discretionary decision left to local school districts by state law.
- For Education Code section 17213.1, the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Ed. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.

Recommendation

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

STAFF ANALYSIS

Claimant

Brentwood Union School District

Chronology

07/22/98	Claimant Brentwood Union School District files original test claim with the Commission on State Mandates (Commission)
01/26/99	Department of Finance (DOF) files comments on the test claim
09/18/01	Claimant Brentwood Union School District files amendment to test claim to add Education Code section 17215.5 (formerly section 39006, renumbered by Statutes 2000, chapter 135) and section 17213.1, as added by Statutes 1999, chapter 1002
12/05/01	DOF files comments on amendment to test claim
07/28/04	Commission staff issues draft staff analysis
07/29/04	Claimant files authorization for Schools Mandate Group to act as claimant representative
08/19/04	Claimant files comments on the draft staff analysis
09/09/04	Commission staff issues final staff analysis

Background

Test claim legislation: The amended test claim includes claims made under two separate sections of the Education Code.

Education Code section 17215.5¹ requires that prior to acquiring property for "a new schoolsite in an area designated ... for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:"

- That the district has "notified and consulted" with the local zoning agency (city and/or county) that has jurisdiction over the proposed school site; and,
- That the final selection has been evaluated "based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land," and,
- That the district will "attempt to minimize any public health and safety issue resulting from the neighboring agricultural uses...."

The California Farm Bureau sponsored the test claim legislation because restrictions imposed on pesticide use on agricultural land bordering schools resulted in a net loss of profitable land from the neighboring parcel. The sponsor argued that school districts locate schools in agricultural areas often, and that the intent of the legislation is not to stop siting schools in these areas, but

¹ Former Education Code section 39006 enacted by Statutes 1996, chapter 509, was renumbered to section 17215.5 by Statutes 2000, chapter 135, between the time of the original and amended test claim filings.

rather to, "... require dialogue and exchange of information between the school district and the city or county when a school is proposed for an agricultural area."²

Education Code section 17213.1³ requires that if a school district wishes to apply for state funds under the Leroy F. Greene School Facilities Act of 1998, it must perform a number of specified activities. The Leroy F. Greene School Facilities Act established a new state program in which the State Allocation Board would provide state per pupil funding for new school facilities construction and school facilities modernization. The act included Proposition 1A, passed by voters in November 1998, that authorized the sale of \$9.2 billion in general obligation bonds for K-12 schools (\$6.7 billion) and higher educational facilities (\$2.5 billion.) The proposition also limited, with some exceptions, the fees school districts could levy on developers and homeowners to finance school facilities.⁴ The activities required by section 17213.1 include the following:

- 1) Prior to acquiring the site, the school district must contract with an environmental assessor⁵ (assessor) to supervise the preparation of, and sign, a Phase I environmental assessment⁶ or the school district may choose to forgo a Phase I assessment and proceed directly to a preliminary endangerment assessment.⁷
- 2) If the district chooses to complete a Phase I environmental assessment and the assessment concludes that further investigation of the site is not necessary the district must then submit the assessment to the Department of Toxic Substances Control (DTSC).
 - a) If the DTSC finds the assessment sufficient, it will notify the California Department of Education (CDE) that the assessment has been approved.
 - b) If the DTSC does not find the assessment sufficient, it will instruct the district on what steps need to be taken to complete the assessment.

² Senate Committee on Education, Analysis of Assembly Bill No. 1724 (1995-96 Reg. Sess.) as amended June 12, 1996, page 2.

³ Education Code section 17213.1 was amended by Statutes 2001, chapter 865 and Statutes 2002, chapter 935 subsequent to the amended test claim filing to make public review voluntary under subdivisions (a)(6)(A)-(a)(7).

⁴Office of the Legislative Analyst, analysis of Proposition 1A, Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, pages 3-4. <http://www.lao.ca.gov/ballot/1998/1A_11_1998.htm> [as of July 19, 2004].

⁵ Defined by Education Code section 17210, subdivision (b).

⁶ Defined by Education Code section 17210, subdivision (g).

⁷ Defined by Education Code section 17210, subdivision (h), as an "activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning ability, public heath or the environment."

- c) The DTSC may also conclude that a preliminary endangerment assessment is required based on the findings of the Phase I environmental assessment.
- 3) If the Phase I environmental assessment concludes that further investigation of the site is necessary or if the district chooses to forgo a Phase I assessment and to move directly to a preliminary endangerment assessment, the district has two options:
 - a) it must either contract with an assessor to supervise the preparation of, and sign, a preliminary endangerment assessment, or,
 - b) it must enter into an agreement with the DTSC to prepare this assessment (including an agreement to compensate DTSC for their costs for this assessment).
- 4) The preliminary endangerment assessment shall conclude EITHER:
 - a) further investigation is not required; or,
 - b) that a release of hazardous materials has occurred or there is a threat of a release of hazardous materials at the site.
- 5) The school district must publish notice that the preliminary endangerment assessment has been submitted and shall make the assessment available for public review according to guidelines provided by subdivision (a)(6).⁸
- 6) The DTSC shall then either find:
 - a) that no further study of the site is required; or,
 - b) that the preliminary endangerment assessment is not satisfactory and further action is necessary; or,
 - c) if a release of hazardous materials has been found to have occurred and the district wishes to go forward with the project the district must:
 - i) prepare a financial analysis of the costs of response action required at the school site; and,
 - ii) assess the benefits of the site; and,
 - iii) obtain approval from the CDE for the site.

Further, section 17213.1⁹, subdivision (11) states that "costs incurred by the district" may be reimbursed in accordance with section 17072.13. Section 17072.13, which is also part of the Leroy F. Greene School Facilities Act of 1998, allows for 50% of costs incurred by the district during the proposal and siting process to be reimbursed under the act. Section 17213.1 was enacted in response to Joint Legislative Audit Committee (JLAC) hearings, held in 1992, which concluded that the existing procedures for approval of school site acquisition must be "immediately reconfigure[d]... to ensure local compliance with the laws." Specifically, the bill was in response to the actions of the Los Angeles Unified School District, which a legislative

⁸ Since the filing of the amended test claim, Statutes 2001, chapter 865 amended this to make public review voluntary under section 17213.1, subdivisions (a)(6)(A)-(a)(7).

⁹ All statutory references are to the Education Code unless otherwise indicated.

committee report alleged requested state approval for at least nine schools with knowledge that the sites may have contained toxic contamination.¹⁰

School District Facilities: Under current California law, school facilities can be constructed with or without state financial assistance. The School Facility Program (SFP) was created in 1998 under the Leroy F. Greene School Facilities Act¹¹ to administer state funds for school facility construction. The SFP was created to streamline the process for receiving state bond money for public school facilities construction. The program, which involves the State Allocation Board (SAB), Office of Public School Construction (OPSC), the School Facilities Planning Division (SFPD) of the CDE and the Division of the State Architect (SA), allocates funding to local school districts from statewide general obligation bonds passed by the voters of California.

The first funding for the SFP came from Proposition 1A, approved in 1998, which provided \$6.7 billion for K-12 facilities. The second funding came from Proposition 47, which included \$11.4 billion for K-12 facilities. An additional \$12.3 billion was added to this fund with the passage of Proposition 55 in March 2004.

A school district wishing to receive state funding submits a funding application package to the SFP. The OPSC then reviews and evaluates the package under its regulations and policies. Approval of the plans by both the SA and the SFPD are required before the SAB approves the apportionment.¹² The money is then released to the district, which is required to submit expenditure reports to the OPSC, which audits all allocations.¹³

In order to receive the required approval of the CDE, the school district must follow the appropriate guidelines under California Code of Regulations, title 5, division 1, chapter 13, subchapter 1.¹⁴ These regulations include guidelines on site selection,¹⁵ design of education facilities¹⁶ and procedures for plan approval.¹⁷

¹⁰ Conference Report on Senate Bill No. 162 (1999-2000 Reg. Sess.) as amended July 12, 1999, page 4.

¹¹ This statute (Stats. 1998, ch. 407), among others, is the subject of test claim 02-TC-30, *School Facilities Funding Requirements*.

¹² The New Construction Program provides 50% state funds for public school projects while the Modernization Program provides 60% state funds.

¹³ See School Facility Program Guidebook. <http://www.documents.dgs.ca.gov/OPSC/PDF-Handbooks/SFP_GdBk.pdf> [as of July 19, 2004]. This document is also part of test claim 02-TC-30, *School Facilities Funding Requirements*.

¹⁴ See School Site Selection and Approval Guide. <<http://www.cde.ca.gov/ls/fa/sf/schoolsitesguide.asp>> [as of July 19, 2004].

¹⁵ California Code of Regulations, title 5, section 14010.

¹⁶ California Code of Regulations, title 5, section 14030.

¹⁷ California Code of Regulations, title 5, sections 14011 and 14012.

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code 17514. In the original claim, claimant alleges that the test claim legislation requires school districts to engage in the following reimbursable state-mandated activities:

1. Develop and adopt policies and procedures in accordance with Education Code section 39006 (now § 17215.5) for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based on all factors affecting the public interest, not limited to selection based on the cost of the land.
4. Prior to the commencement of purchasing property for any school site:
 - a. research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and,
 - b. research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. notify the city, county, or city and county within which the prospective school site is located; and,
 - b. consult with the city, county or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,
 - b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,
 - c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.
7. Conduct a meeting of the governing board to make the findings required by Education Code section 39006 (now § 17215.5).

8. Prepare and draft a board resolution with the following findings:
 - a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,
 - b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,
 - c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.¹⁸

In the amended test claim, claimant states that based on the Department of Finance (DOF) letter filed on January 26, 1999,¹⁹ the claimant now believes that the following activities "were part of prior law and therefore removes them from [the] amended test claim filing:" (3) evaluating the property based on all factors, (4) researching city and/or county zoning requirements and current use, and (5) notifying the city and/or county within which the site is located.²⁰ Further, claimant amended the test claim to add new alleged state-mandated activities, as follows:

- 1) contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment (§ 17231.1, subd. (a)); or,
- 2) if the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the DTSC to oversee the preparation of the preliminary endangerment assessment (§ 17213.1, subd. (a)(4)).²¹

Claimant commented on the draft staff analysis as follows. Under the Education Code, a school district must house and educate all students that establish residency in the district in a manner that does not risk the health or safety of its students. Claimant argues that the activities related to section 17515.5 are reimbursable if all discretion is removed from the district for siting and building a new school. Claimant states that school districts that are grossly overpopulated or

¹⁸ Original test claim (98-TC-04), pages 13-14.

¹⁹ In a letter dated January 26, 1999, the DOF advised that activities [1] and [2] were reimbursable mandates, that activities [3], [4] and [5] were activities already required by state law and therefore not reimbursable mandates and that activities [6], [7] and [8] where not required by section 17215.5 and therefore also not reimbursable mandates.

²⁰ Amended test claim (01-TC-03), page 7.

²¹ Amended test claim (01-TC-03) page 16. A different numbering scheme is assigned to these activities on pages 9-10 of the amended test claim, but for this analysis the numbering scheme on page 6 will be used.

facing an influx of students due to new development in the districts' boundaries have no choice but to build new school sites to house and educate pupils. Under circumstances of gross overcrowding in the district, claimant argues, the decision to build a new school site is practically compelled. Those districts that face overcrowding and have no choice but to seek out agricultural land for building a school site, according to claimant, are mandated to comply with section 17515.5 because there is no discretion afforded the district. Thus, claimant requests Commission staff to amend the analysis to include a limited exception to reimburse only those districts that can establish they are practically compelled to build a new school site due to overpopulation or expected additional development and growth within the district *and* that the only available option is to acquire agricultural land.

Claimant states that it does not dispute staff's conclusions regarding section 17213.1.

State Agency Position

In its January 1999 comments on the original test claim statute (§ 39006, now § 17215.5), DOF states that the alleged state-mandated activities of developing policies and procedures and training staff both appeared to be state-mandated activities of minimal cost. DOF states that the alleged state-mandated activities of evaluating the site on all factors and determining if the site is zoned for agriculture are already incorporated into state law under Education Code section 17212. And the requirement that the district notifies and consults with a city and/or county is also incorporated into state law under Education Code section 17213, subdivision (b). DOF states that since all three are previously required activities they are not new programs or higher levels of service. DOF also states that the alleged state-mandated activities of preparing a report, holding a meeting, and, passing a resolution, were not required by Education Code section 17215.5. DOF states that section 17215.5 only requires the governing board to make a finding; it does not require staff to prepare a report, conduct a specific meeting or prepare and pass a resolution.²²

In its December 2002 comments on the amended test claim statutes (§§ 17215.5 & 17213.1), DOF reiterates its prior statements on policy development and training, stating that both appear to be state-mandated activities that impose minimal cost. DOF argues that the newly alleged state-mandated activities, such as contracting for a Phase I environmental assessment, and contracting for a preliminary endangerment assessment are not state-mandated. DOF points out that the entire section 17213.1 begins with "As a condition of receiving funding pursuant to Chapter 12.5..."²³ Therefore, DOF argues that section 17213.1 sets out the requirements for an optional funding source and does not constitute state-mandated activities.

However, DOF reverses its position on the alleged state-mandated activities of preparing a report and a resolution, arguing that although they are not specifically required by the section 17215.5, these activities are "reasonable and consistent with the intent of the statute."²⁴ DOF states that, in accordance with its previous comments, holding a meeting is not specifically required by

²² DOF comments on test claim 98-TC-04, dated January 26, 1999, pages 1-3.

²³ Education Code section 17213.1.

²⁴ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

section 17215.5 and the board could make the required finding at “a regularly scheduled board meeting.”²⁵

Finally, DOF points out that, “[t]he appropriate period in the State Mandates process for identifying reimbursable activities is the Test Claim phase … [i]t is inappropriate to transform the Parameters and Guidelines phase … into a venue for Claimants to seek reimbursement for activities they failed to identify in their test claims.”²⁶

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁷ recognizes the state constitutional restriction on the powers of local government to tax and spend.²⁸ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁹ A test claim statute or executive order may impose a reimbursable state program if it orders or commands a local agency or school district to engage in an activity or task.³⁰ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.³¹

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³² To determine if the

²⁵ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

²⁶ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

²⁷ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders of regulations initially implementing legislation enacted prior to January 1, 1975.”

²⁸ *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 735.

²⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

³⁰ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

³¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) ___ Cal.4th ___ [16 Cal.Rptr.3d 466, 477] (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig*, (1988) 44 Cal.3d 830, 835.

³² *San Diego Unified School Dist.*; *supra*, ___ Cal.4th ___ [[16 Cal.Rptr.3d 466, 475]]; reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirement in effect immediately before the enactment of the test claim legislation.³³ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."³⁴ Finally, the newly required activity or increased level of service must impose costs mandated by the state.³⁵

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³⁶ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."³⁷

Issue: Do the test claim statutes impose a state-mandated activity on school districts within the meaning of article XIII B, section 6?

The courts have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs "mandated" by a new program or higher level of service imposed upon them by the state.³⁸ Thus, the issue is whether the test claim statutes impose a state-mandated activity on school districts.

Education Code section 17215.5: This section requires the governing board of a school district to make three findings if the board wishes to acquire and build a new school on land zoned for agricultural use. The section states that before acquiring land zoned for agricultural use the governing board of a school district must find:

- 1) that the school district has notified and consulted with the city and/or county within which the site is located; and,
- 2) that the final site selection has been evaluated by the school governing board based on factors other than costs; and,
- 3) that the school district will attempt to minimize any public health issue resulting from neighboring agricultural uses.

³³ *San Diego Unified School Dist., supra*, ___ Cal.4th ___ [16 Cal.Rptr.3d 466, 477]. *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, 835.

³⁴ *San Diego Unified School Dist., supra*, ___ Cal.4th ___ [16 Cal.Rptr.3d 466, 477].

³⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 187; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

³⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³⁷ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³⁸ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835; *City of San Jose v. State of California, supra*, 45 Cal.App.4th 1802, 1816.

Staff finds that this section is not subject to article XIII B, section 6 because the decisions to construct a new school as well as where to site it are discretionary decisions made by the local governing board of a school district. Section 17215.5 does not require the acquisition of any land for a school, nor does it specify the type of land to be acquired (including land zoned for agricultural use.)

Although California law does express the intent of the Legislature that public education shall be a priority in the state and provided by the state,³⁹ there are no statutes or regulations requiring a school district or county board of education to construct school facilities. School districts are given the power by state law to lease⁴⁰ or purchase⁴¹ land for school facilities, to construct school facilities⁴² and to establish additional schools in the district.⁴³ However, in all of these statutes permissive language is used when describing the role of the governing board of the school district. In sections 17244 and 17245 the board "...is authorized..." and section 17342 states that the, "governing board of any school, whenever in its judgment it is desirable to do so, may establish additional schools in the district."

California courts have also found that the construction of school facilities within a school district is a discretionary decision of the school district. In *People v. Oken*, the court found that, "[w]here, when or how, if at all, a school district constructs school buildings is a matter within the sole competency of its governing board to determine."⁴⁴ This was reiterated in a state Attorney General opinion in 1988.⁴⁵

With the conventional construction of school facilities, the question of "where, when or how, if at all, a school district shall construct a school building [] is a matter within the sole competency of its governing board to determine ." (*People v. Oken* (1958) 159 Cal.App.2d 456, 460.) The same is essentially true with the construction of a school facility under the Leroy F. Greene State School Building Lease-Purchase Law.⁴⁶

This language indicates that all aspects of new school facilities, including when they are constructed and if they are constructed at all, is a decision left to local school boards.

In recent cases the courts have again held that the power to site a school belongs to the local school district and not the state. In *Town of Atherton v. Superior Court of San Mateo*, the court found that "[u]nder the statutes ... the state has expressly granted the power of location to its

³⁹ Education Code sections 16001, 16701 and 17001.

⁴⁰ Education Code section 17244.

⁴¹ Education Code sections 17340 and 35162.

⁴² Education Code sections 17245 and 17340.

⁴³ Education Code sections 17342.

⁴⁴ *People v. Oken* (1958) 159 Cal. App.2d 456, 460.

⁴⁵ "Although Attorney General opinions are not binding, they are entitled to great weight." *Freedom Newspapers, Inc. v. Orange County Employees Retirement* (1993) 6 Cal.4th 829, 832.

⁴⁶ 71 Opinions Attorney General of California 332, 339 (1988).

agencies, the school districts.”⁴⁷ In *City of Santa Clara v. Santa Clara Unified School District*, the court found that “the selection of a school site by a school district involves an exercise of legislative and discretionary action and may not be challenged as to its wisdom, expediency or reasonableness....”⁴⁸

Additionally, there are no statutes that direct school districts where to place schools. Former Education Code sections 37000 through 37008 did relate to the specific location of schools, but were repealed by Statutes 1989, chapter 1256. Currently, the only section that pertains to state agency involvement in school site selection is section 17521. However, section 17521 only requires that the CDE create standards for use by school districts in the selection of school sites and allows school districts to request advice on the acquisition of a proposed site.

Therefore, based both on statutes and case law, the decision to acquire land on which to site a school and the decision as to which land to acquire are both decisions that are made at the discretion of the school district. If a district’s decision is discretionary, no state-mandated costs will be found.

In *City of Merced v. State of California*,⁴⁹ the court determined that the city’s decision to exercise eminent domain was discretionary. The court found that no state reimbursement was required for loss of goodwill to businesses over which eminent domain was exercised, the court reasoned as follows:

We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain.*⁵⁰ [Emphasis added.]

In *Kern High School District*,⁵¹ the California Supreme Court found that costs associated with notices and agendas required by state law were not entitled to reimbursement if the requirements for notice and agendas were part of a program in which the school district had chosen to participate. In that case, the California Supreme Court affirmed the reasoning of the *City of Merced* case as follows:

[T]he core point articulated by the court in *City of Merced* is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds –

⁴⁷ *Town of Atherton v. Superior Court of San Mateo* (1958) 159 Cal.App.2d 417, 428.

⁴⁸ *City of Santa Clara v. Santa Clara Unified School District* (1971) 22 Cal.App.3d 152, 161, footnote 4.

⁴⁹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

⁵⁰ *Ibid.*

⁵¹ *Kern High School District, supra*, 30 Cal.4th 727.

even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁵²

The Supreme Court left undecided whether a reimbursable state mandate "might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program."⁵³ As explained below, there is no evidence in the record that school districts are "practically compelled" to acquire agricultural land to build schools. The test claim statute does not impose a penalty for noncompliance.

Although the Supreme Court declined to extend the *City of Merced* holding in a recent case,⁵⁴ its core point stands: there is no state mandate where a local government or school district freely undertakes activities at its option. The Commission is not free to disregard the clear statement of the California Supreme Court interpreting mandates law. Thus, pursuant to state law, school districts remain free to site new schools where they choose. The statutory duties imposed by section 17215.5 flow from the decision to site a school on land zoned for agricultural use. Based on the *Kern High School Dist.* case, since this decision is a local discretionary activity, any requirements imposed by the state on the local decision do not constitute a reimbursable state mandate.

Claimant argues that the Commission should find a limited exception to reimburse those districts that can establish they are practically compelled to build a new school site due to overpopulation or expected additional development and growth within the district and that the only available option is to acquire agricultural land.

Staff disagrees because claimant does not submit any evidence as to the existence of this situation. The Commission must base its findings on substantial evidence in the record.⁵⁵

...[S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. [The finding must be supported by] ...all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."⁵⁶

⁵² *Id.* at page 742.

⁵³ *Ibid.*

⁵⁴ *San Diego Unified School Dist., supra*, ___ Cal.4th ___ [[16 Cal.Rptr.3d 466, 485-486]. The Court reached its decision on alternative grounds not involving the *City of Merced* rationale.]

⁵⁵ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; Government Code section 17559, subdivision (b).

⁵⁶ *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

Moreover, the Commission's regulations require that all factual evidence be supported by either a signed declaration and/or sworn testimony.⁵⁷

Since claimant has not submitted evidence describing a situation where a school district meets the hypothetical criteria claimant suggests, the record does not support a finding of a state-mandated program. Therefore, staff finds that section 17215.5 does not impose a state-mandated activity on school districts within the meaning of article XIII B, section 6.

Education Code section 17213.1: This section, enacted in 1999, lays out the additional requirements⁵⁸ that school districts must satisfy in order to receive funding from the Leroy F. Greene School Facilities Act of 1998.⁵⁹ It requires school districts to contract for a Phase I environmental assessment or if necessary a preliminary endangerment assessment if the school district wishes to request state funding for the facility. These requirements specifically address the study of new school sites for natural, previous or potential releases of hazardous or toxic substances.

When construing a statute, the Commission, like a court, must ascertain the intent of the Legislature so as to effectuate the purpose of the law.

In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose [citation]. At the same time, we do not consider statutory language in isolation [citation]. Instead, we examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts [citation]. Moreover, we read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness [citations].⁶⁰

Section 17213.1's first sentence states, "As a condition of receiving state funding...." The plain meaning of this section is that the requirements in section 17213.1 only apply to school districts that decide to request funding through the Leroy F. Greene School Facilities Act of 1998. Thus, the district's decision to seek funds under this act is discretionary and not mandatory. DOF

⁵⁷ California Code of Regulations, title 2, sections 1183.03, subdivision (b)(1) and 1187.5, subdivision (b).

⁵⁸ Basic requirements for school siting can be found in California Code of Regulations, title 5, sections 14001-14012 and Education Code section 17251.

⁵⁹ Section 17072.13 provides that a school district may request up to 50% of the cost of implementing this section if it chooses to request funding from the State Funding Program (SFP). If a school district qualifies as eligible for financial hardship under section 17075.10 or if the site meets the environmental hardship criteria in section 17072.13, subdivision (c)(1), then up to 100% of this cost can be requested from the SFP.

⁶⁰ *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043.

alleges that approximately 58% of districts do not apply for funding under the 1998 Leroy Greene Act.⁶¹

As stated above, if a district's decision is discretionary, no state-mandated costs will be found.⁶²

Therefore, the requirements imposed on the conditional funding from the Leroy F. Greene School Facilities Act of 1998 are not state-mandated activities, so section 17213.1 is not a reimbursable mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff finds that the test claim statutes, Education Code sections 17215.5 and 17213.1, do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This conclusion is based on the following findings:

- 1) For Education Code section 17215.5, the specified findings the school district must make if the proposed school site is on land zoned for agricultural use is not state-mandated because the decision to build a school, as well as where to locate it, including the acquisition of agricultural land for a school, is a discretionary decision left to local school districts by state law.
- 2) For Education Code section 17213.1, the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Ed. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.

Recommendation

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

⁶¹ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

⁶² *Kern High School District, supra*, 30 Cal.4th 727, 742; *City of Merced v. State of California, supra*, 153 Cal.App.3d 777, 783.

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AUG 14 1998

STATE OF CALIFORNIA

Paula Higashi, Executive Director
 Commission on State Mandates
 1300 I Street, Suite 950
 Sacramento, CA 95814

Re: Test Claim of Brentwood Union School District
 Chapter 509, Statutes of 1996 (AB 1724)
 Education Code Section 39006

98-TC-04

Acquisition of Agricultural Land For a School Site

Dear Ms. Higashi:

Attached please find the original and seven (7) copies of the test claim of the Brentwood Union School District alleging reimbursable costs mandated by the State for schools districts and county offices of education to perform the administrative tasks associated with implementing the requirements of Chapter 509, Statutes of 1996 (AB 1724), Education Code Section 39006.

Brentwood Union School District has retained Mandated Cost Systems, Inc. who will be assisting us in processing this test claim. Mandated Cost Systems, Inc.'s representative is Paul C. Minney of GIRARD & VINSON. Should you have any questions or need additional information, please contact Mr. Minney at (925) 746-7660.

Very truly yours,

J. Douglas Adams
 Superintendent

cc: Steve Smith, Mandated Cost Systems, Inc.
 Diana Halpenny, Chair, Education Mandated Cost Network Executive Committee

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BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim Of:

**BRENTWOOD UNION SCHOOL
DISTRICT**

-) No. CSM 98-TC-04
-) **TEST CLAIM OF BRENTWOOD UNION SCHOOL DISTRICT**
-) Chapter 509, Statutes of 1996 (AB 1724)
Education Code Section 39006
-) *Acquisition of Agricultural Land for a School Site*

TABLE OF CONTENTS

I.	STATEMENT OF CLAIM	1
II.	SOURCE OF THE MANDATED COSTS	1
III.	ACTIVITIES REQUIRED BY STATE PRIOR TO JANUARY 1, 1975	1
IV.	HISTORY OF REQUIRED ACTIVITIES FROM JANUARY 1, 1975 TO DATE OF MANDATE CLAIMED HEREIN	2
V.	DESCRIPTION OF REQUIRED ACTIVITIES IMMEDIATELY PRIOR TO NEWLY MANDATED ACTIVITIES	5
A.	Evaluate Land at Public Hearing Pursuant to State Department of Education Standards	5
B.	Notice to Planning Commission	6
C.	Site Investigation	6
D.	Geological and Soil Engineering Study	7
E.	Submit Geological and Soil Engineering Study	7
F.	Environmental Impact Report	7
G.	Acquisition of Contiguous Real Property	10
H.	Acquisition of Property Near an Airport	11
I.	Public Hearing Regarding Property Acquisition Negotiations	12
VI.	DESCRIPTION OF NEWLY MANDATED ACTIVITIES	12
A.	School Districts Newly Mandated Activities	12
VII.	CONSTITUTIONAL PROVISIONS, FEDERAL REQUIREMENTS AND COURT DECISIONS AFFECTING THE MANDATED ACTIVITIES	15

VIII. ESTIMATED COSTS RESULTING FROM THE MANDATE	16
A. School Districts	16
IX. APPROPRIATIONS	16
X. CLAIM REQUIREMENTS	16
XI. CERTIFICATION	18

I. STATEMENT OF THE CLAIM

This test claim alleges State mandated reimbursable costs for school districts¹ to implement the requirements of Chapter 509, Statutes of 1996 (AB 1724) when acquiring agricultural land for a school site. Chapter 509, Statutes of 1996 added Education Code §39006 which requires the governing board of a school district which is acquiring real property designated as agricultural land for a school site to make certain findings prior to commencing acquisition of the property.

II. SOURCE OF THE MANDATED COSTS

The mandates described in this test claim are contained in Chapter 509, Statutes of 1996,² which added §39006 to the Education Code.

III. ACTIVITIES REQUIRED BY STATE PRIOR TO JANUARY 1, 1975

This section contains a summary of the law, pertaining to the mandated activities claimed herein, as of December 31, 1974.

The statutory scheme in existence in 1974 provided that prior to final site selection, school district governing boards were required to investigate prospective school sites to ensure that site selection was determined by an evaluation of all factors affecting the public interest and not limited to selection on the basis of raw land cost only.

The Education Code required that site investigation include geological and soil engineering studies as needed to provide an assessment of the site and potential for earthquake damage. The site investigation was to be conducted by competent personnel. The geological and soil engineering studies were required to be of such nature as to preclude siting a school in any location where the geological characteristics were such that the construction effort required to make the site safe for

¹ "School district" means any school district, community college district, or county superintendent of schools. (See Government Code §17519).

² A true and correct copy of Chapter 509, Statutes of 1996 is attached hereto, marked as Exhibit "A" and fully incorporated by reference herein.

occupancy would be economically unfeasible. The site evaluation was also required to include the location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors that would affect the operating costs, as well as the initial costs, of the total project.

The statutes further required that no school building was to be constructed or situated on the trace of an active geological fault. An active geological fault is where surface ruptures can be reasonably expected to occur within the life of the building.

The statutes also required that similar geological and soil engineering investigations were to be made as deemed necessary by the Department of General Services for the construction of any school building. A study did not need to be made if the site or sites were the subject of an adequate prior study.

A copy of the investigation report conducted pursuant to these sections was required to be submitted to the Department of General Services and the Department of Education.

**IV. HISTORY OF REQUIRED ACTIVITIES FROM JANUARY 1, 1975 TO
DATE OF MANDATE CLAIMED HEREIN**

The following is a chronology of the statutory authority affecting school site land acquisition from January 1, 1975 to present:

Exhibit	Year	Title	Notes
"B"	1976	Stats. 1976, c. 557, §1 Education Code §15002.1 ³	• Amendment to Statute

³

A true and correct copy of Stats. 1976, c. 557, §1, Education Code §15002.1 is attached hereto, marked as Exhibit "B" and fully incorporated by reference herein.

Exhibit	Year	Title	Notes
"B" (Con't)	1976	Stats. 1976, c. 557, §1 Education Code §15002.1 (Con't)	<ul style="list-style-type: none"> ● Added language stating that where any school site located within the boundaries of a "special studies zone" or "within an area designated as geologically hazardous in the seismic safety element of local general plan..." the school district is required to conduct an investigation which shall include "such geological and soil engineering studies by competent personnel as are needed to provide an assessment of the nature of the site and potential for earthquake or other geological hazard damage." ● Amendment relocated within the statute the language: "No such studies need be made if the site or sites under construction have been the subject of adequate prior studies." ● Statute now defines a "special study zone" as one which is shown on any map, or maps, compiled by the State Geologist pursuant to the provisions of the Public Resources Code Chapter 7.5 (commencing with §2621). ● Statute changed the recipient of the investigation reports. Only the Department of Education is required to receive a report. ● Deleted language regarding that no school building may be constructed or situated on the trace of an active geological fault. Statute also deleted definition of "active geological fault." Language moved to Education Code §15002.2.

Exhibit	Year	Title	Notes
"B" (Con't)	1976	Stats. 1976, c. 557, §1 Education Code §15002.1 (Con't)	<ul style="list-style-type: none"> Deleted language regarding "similar geological and soil engineering investigations" that are deemed necessary by the Department of General Services for the construction of any school building, or if the estimated costs exceeds ten thousand (\$10,000) dollars. Language moved to Education Code §15002.2.
"C"	1976	Stats. 1976, c. 1010, §2 Education Code §39002 ⁴	<ul style="list-style-type: none"> Renumbered statute to Education Code §39002. Statute reverted to 1972 version. Operative date is April 30, 1977, the same operative date as Stats. 1977, c. 36, §141.
"D"	1977	Stats. 1977, c. 36, §141 Education Code §39002 ⁵	<ul style="list-style-type: none"> Statute the same as Stats. 1976, c. 557, §1 above. Stats. 1976, c. 557, §1 is urgency legislation which amended a large portion of Education statutes. Section 39002 is included in c. 557. The change was operative on April 30, 1977, the same date as Stats. 1976, c. 1010, §2 which is listed above.
"E"	1984	Stats. 1984, c., 1009, §1 Education Code §39002 ⁶	<ul style="list-style-type: none"> Amendment to statute. Changed reference of local general plan from Government Code §65302(f) to Government Code §65302(g).

⁴ A true and correct copy of Stats. 1976, c. 1010, §2, Education Code §39002 is attached hereto, marked as Exhibit "C" and incorporated fully by reference herein.

⁵ A true and correct copy of Stats. 1977, c. 36, §141, Education Code §39002 is attached hereto, marked as Exhibit "D" and incorporated fully by reference herein.

⁶ A true and correct copy of Stats. 1984, c. 1009, §1, Education Code §39002 is attached hereto, marked as Exhibit "E" and incorporated fully by reference herein.

Exhibit	Year	Title	Notes
"F"	1994	Stats. 1994, c. 840, §10 [AB 3562] Education Code §39002 ⁷	<ul style="list-style-type: none"> Deleted language that a copy of the investigation report is required to be submitted to the State Department of Education. AB 3562 is a bill that deleted certain reports, certifications and submittals made by certain state agencies and local educational entities.
"G"	1998	Stats. 1996, c. 277 §3 [SB 1562] Education Code §17212 ⁸	<ul style="list-style-type: none"> Renumbered statute from §39002 to Education Code §17212 without any substantive changes.

V. DESCRIPTION OF REQUIRED ACTIVITIES IMMEDIATELY
PRIOR TO NEWLY MANDATED ACTIVITIES

On December 31, 1996 (the day immediately prior to the effective date of Chapter 509, statutes of 1996), school districts acquiring agricultural land for a school site were required to do the following:

A. Evaluate Land At Public Hearing Pursuant To State Department of Education Standards

Prior to commencing the acquisition of real property for a new school site or an addition, a school district governing board was required to evaluate the property at a public hearing according to the standards set forth by the State Department of Education.⁹ Those standards are set forth in Title 5 of the California Administrative Code §14010.¹⁰

⁷

A true and correct copy of Stats. 1994, c. 840, §10, [AB 3562], Education Code §39002 is attached hereto, marked as Exhibit "F" and incorporated fully by reference herein.

⁸

A true and correct copy of Stats. 1996, c. 277 §3 [SB 1562], Education Code §17212 is attached hereto, marked as Exhibit "G" and incorporated fully by reference herein.

⁹

A true and correct copy of Education Code §39001 is attached hereto, marked as Exhibit "H" and incorporated fully by reference herein.

¹⁰

A true and correct copy of §14010 of the California Administrative Code is attached hereto, marked as Exhibit "T" and incorporated fully by reference herein.

B. Notice to Planning Commission

Under Public Resources Code §21151.2, prior to acquiring title to real property, the school district governing board was required to give written notice of the proposed acquisition to the planning commission having jurisdiction. The planning commission was then required to conduct an investigation of the proposed site and within thirty (30) days after receipt of the notice, the commission was required to submit to the governing board a written report of the investigation and its recommendations regarding the acquisition of title. (Public Resources Code §21151.2).

The school district governing board could not acquire title to the property until the report was received. If the report did not favor acquisition of title, the governing board could not acquire title to the property until 30 days after the commission's report was received. (Public Resources Code §21151.2).

C. Site Investigation

As of December 31, 1996, Education Code §39002 provided that prior to final site selection, school district governing boards were required to have prospective school sites investigated by competent personnel to ensure that the final site selection was determined by an evaluation of all factors affecting the public interest and was not limited to selection on the basis of raw land cost only. (Education Code §39002).

If the prospective site was located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan, then Education Code §39002 required the investigation to include geological and soil engineering studies by competent personnel to assess the nature of the site and potential for earthquake or other geological hazard damage. (Education Code §39002).

If the school district was required to conduct geological and soil engineering studies,

the studies were required to be of such nature as to preclude siting a school in any location where the geological characteristics were such that the construction effort required to make the site safe for occupancy would be economically unfeasible. (Education Code §39002).

The site evaluation was also required to include the location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors that would affect the operating costs, as well as the initial costs, of the total project. (Education Code §39002).

D. Geological and Soil Engineering Study

The Department of General Services may also have required a school district to conduct geological and soil engineering studies for property located outside a special studies zone. (Education Code §39002.5). However, no such study was required if the site had been the subject of an adequate prior study. (Education Code §39002.5).

E. Submit Geological and Soil Engineering Study

Copies of any geological and soil engineering investigation report were required to be submitted to the Department of General Services and the Department of Education. (Education Code §39002.5).

F. Environmental Impact Report

A school district was required to prepare and consider an environmental impact report ("EIR") before any project was approved or disapproved. (Public Resources Code §21151.8 and Education Code §39003). A school district could not approve an environmental impact report or negative declaration for any project involving the purchase of a schoolsite (or the construction of a new elementary or secondary school) by a school district unless all of the following occurred:

1. The environmental impact report or negative declaration included

information needed to determine if the property proposed to be purchased, or to be constructed upon, was any of the following:

- a. Current/Former Hazardous Waste Disposal Site: The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes had been removed.
 - b. Hazardous Substance Release Site: A hazardous substance release site identified by the State Department of Health Services in a list adopted pursuant to §25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with §25300) of Division 20 of the Health and Safety Code.
 - c. Site With Pipelines Carrying Hazardous Materials: A site which contained one or more pipelines, situated underground or aboveground, which carried hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline was a natural gas line used only to supply natural gas to that school or neighborhood.
2. Identification of Neighboring Hazardous Sites: The school district preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite was located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the

lead agency was required to include a list of the locations for which information is sought.

3. School District Governing Board Written Findings: The governing board of the school district makes one of the following written findings:

- a. Consultation identified no such facilities specified in paragraph (2), above.
- b. The facilities specified in paragraph (2), above, exist, but one of the following conditions applied:
 - i. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.
 - ii. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.
- c. If the governing board makes such a finding, it was required to also make a subsequent finding, prior to occupancy of the school, that the emissions have been mitigated.

4. Each administering agency, air pollution control district, or air quality

management district receiving written notification from a school district to identify facilities pursuant to paragraph (2), above, was required to provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification.

5. The environmental impact report or negative declaration was required to be conclusively presumed to comply with this section as to the area of responsibility of any agency which did not respond within thirty (30) days.
6. If a school district carried out the consultation required by paragraph (2), the environmental impact report or the negative declaration was conclusively presumed to comply, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2).

G. Acquisition of Contiguous Real Property

Under Education Code §39013, the governing board of a school district could acquire a site for a school building contiguous to the boundaries of the district and upon the acquisition of the site, the site would become a part of the district. A school site is considered contiguous even if the site is separated from the boundaries of the district by a road, street, stream, or other natural or artificial barrier or right-of-way. (Education Code §39013).

However, under Education Code §39013, a school district could not acquire a contiguous site until the county committee on school district organization of the county or of each of the counties concerned received the proposal for acquisition of the site, and the committee reported its recommendations to the governing boards of the districts and each county superintendent of schools concerned. The report of the county committee was required to be made within sixty (60) days from the time the proposal for acquisition of the site was submitted to it. (Education Code

\$39013).

H. Acquisition of Property Near An Airport

Under Education Code §17215, school district governing boards were required to follow additional procedures prior to the purchase of property located within two miles of an airport.

The governing board of each school district was required to give the Department of Transportation written notice of the proposed acquisition. The board was also required to submit any information required by the Department of Transportation if the proposed site was within two miles, measured by air line, of an airport runway or a potential runway.

The Department of Transportation was required to investigate the proposed site. Within thirty (30) working days after receipt of the notice, the Department was required to submit to the governing board a written report and its recommendations concerning acquisition of the site.

As part of the investigation, the Department of Transportation was required to give notice to the owner and operator of the airport who would be granted the opportunity to comment upon the proposed schoolsite.

The governing board could not acquire title to the property until the report of the Department of Transportation was received. If the report did not favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board could not acquire title to the property until thirty (30) days after the department's report was received and until the department's report has been read at a public hearing duly called after 10 days notice published once in a newspaper of general circulation within the school district or, if there was no newspaper of general circulation within the school district, in a newspaper of general circulation within the county in which the property was located.

If the recommendations of the Department of Transportation were not favorable, the

recommendations could not be overruled without the express approval of the State Allocation Board.

Education Code §17215 did not apply to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

I. Public Hearing Regarding Property Acquisition Negotiations

Under Government Code §54956.8, prior to the negotiations to purchase real property, school district governing boards were required to hold an open and public session in which it identified the real property or real properties and the person or persons with whom its negotiator may negotiate. However, the school district governing board could hold a closed session with its negotiator to grant authority to its negotiator regarding price and terms of payment for the purchase of real property. (Government Code §54956.8).

VI. DESCRIPTION OF NEWLY MANDATED ACTIVITIES

A. School Districts Newly Mandated Activities

Chapter 509, Statutes of 1996 (which added §39006 to the Education Code and took effect on January 1, 1997) results in school districts incurring costs mandated by the State as defined in Government Code §17514,¹¹ by creating new state mandated duties relating to the uniquely governmental function of providing public education to children. The statute applies only to public schools and does not apply generally to all residents and entities in the State.

The new duties mandated by the State upon school districts by Chapter 509, Statutes

¹¹

Government Code §17514 states:

"'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted upon or after January 1, 1975, which mandates a new program or higher level of service of any existing program within the meaning of Section 6 of Article XIIIIB of the California Constitution."

of 1996 (Education Code §39006) which require state reimbursement are as follows:¹²

1. Develop and adopt policies and procedures in accordance with Education Code §39006 for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based upon all factors affecting the public interest, not limited to selection on the basis of the cost of the land.
4. Prior to the commencement of purchasing property for any school site:
 - a. Research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and
 - b. Research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. Notify the city, county, or city and county within which the prospective school site is located.
 - b. Consult with the city, county, or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board

¹²

The Legislative Counsel has determined that Chapter 509, Statutes of 1996 "imposes additional duties on the governing boards of school districts" and therefore imposes a state mandated local program. (See Legislative Counsel's Digest, Chapter 509, Statutes of 1996, attached as Exhibit "J").

to make the following findings:

- a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located.
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.
7. Conduct a meeting of the governing board so that the governing board may make the findings required by Education Code §39006 (i.e., Chapter 509, Statutes of 1996).
 8. Prepare and draft a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located.
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

VII. CONSTITUTIONAL PROVISIONS, FEDERAL REQUIREMENTS AND COURT DECISIONS AFFECTING THE MANDATED ACTIVITIES

There are neither state nor federal constitutional provisions which impact the mandates which are the subject of this test claim. There are no state or federal statutes or executive orders which materially impact the mandated activities which are subject to this test claim. There are no court decisions which impact the mandated activities which are the subject of this test claim. In addition, none of the Government Code §17556¹³ statutory exemptions to a finding of costs mandated by the

¹³

Government Code §17556 states, in pertinent part:

"The commission shall not find costs mandated by the state, as defined in Section 7514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

- (a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
- (b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.
- (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
- (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
- (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
- (f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in

State apply to these statutes. To the extent that school districts may have previously performed functions similar to those mandated by Chapter 509, Statutes of 1996, such efforts did not establish a pre-existing duty that would alleviate the State of its constitutional requirement to reimburse school districts when these activities became mandated.¹⁴

VIII. ESTIMATED COSTS RESULTING FROM THE MANDATE

A. School Districts

It is estimated that the Claimant, Brentwood Union School District, will incur more than \$1,600 in personal services, contracted services, training, supplies, (and other direct and indirect costs) in meeting the requirements mandated by Chapter 509, Statutes of 1996 as further set forth in the Declarations of William B. Bristow and Denise Wakefield attached hereto and fully incorporated by reference herein.

X. APPROPRIATIONS

No funds are appropriated by the statutes for reimbursement of these new costs mandated by the State and there is no other provision of law for recovery of costs for any other services.

XI. CLAIM REQUIREMENTS

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

a statewide election.

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

¹⁴ Government Code §17565 states as follows:

"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

<u>EXHIBITS</u>	<u>DESCRIPTION</u>
Exhibit "A"	Chapter 509, Statutes of 1996
Exhibit "B"	Stats. 1976, c. 557, §1 Education Code §15002.1
Exhibit "C"	Stats. 1976, c. 1010, §2 Education Code §39002
Exhibit "D"	Stats. 1977, c. 36, §141 Education Code §39002
Exhibit "E"	Stats. 1984, c. 1009, §1 Education Code §39002
Exhibit "F"	Stats. 1994, c. 840, §10 [AB 3562] Education Code §39002
Exhibit "G"	Stats. 1996, c. 277 §3 [SB 1562] Education Code §17212
Exhibit "H"	Education Code §39001
Exhibit "I"	California Administrative Code §14010
Exhibit "J"	Legislative Counsel's Digest, Chapter 509, Statute of 1996
Exhibit "K"	Declaration of William B. Bristow of Brentwood Union School District in Support of Test Claim
Exhibit "L"	Declaration of Denise Wakefield of Brentwood Union School District in Support of Test Claim

XI. CERTIFICATION

I certify by my signature below that the statements in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and corrected based upon information and belief.

Executed on 8/12/98, 1998 at Walnut Creek, California, by:

GIRARD & VINSON



Paul C. Minney, Esq.

Counsel for Claimant BRENTWOOD
UNION SCHOOL DISTRICT on Behalf of
Representative Organization MANDATED
COST SYSTEMS, INC.

AUTHORIZATION TO ACT AS REPRESENTATIVE
FOR BRENTWOOD UNION SCHOOL DISTRICT'S TEST CLAIM

ACQUISITION OF AGRICULTURAL LAND FOR A SCHOOL SITE
CSM NO.: _____

I, J. Douglas Adams, Superintendent of Brentwood Union School District, hereby authorize Paul C. Minney of the Law Office of GIRARD & VINSON to act as the representative and sole contact of Brentwood Union School District in the above-referenced test claim. All correspondence and communications regarding this test claim should be forwarded to:

Paul C. Minney, Esq.
GIRARD & VINSON
1676 North California Blvd., Suite 450
Walnut Creek, CA 94596
Telephone: (510) 746-7660
Fax: (510) 935-7995

Dated: July 22, 1998

J. Douglas Adams
J. DOUGLAS ADAMS, Superintendent
Brentwood Union School District

C:\gandy\burns\lrp\ag land #2 test claim.wpdJuly 22, 1998 (9:06AM)

EXHIBIT A

CHAPTER 509, STATUTES OF 1996

(1) Under existing law, prior to commencing the acquisition of real property for a new schoolsite, the governing board of a school district is required to evaluate the property at a public hearing using the site selection standards established by the State Department of Education.

This bill would provide that prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of the school district shall make certain findings, including a finding that the school district will attempt to minimize any public health and safety issues resulting from the agricultural uses that may affect the pupils and employees at the schoolsite.

By imposing additional duties on the governing boards of school districts, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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

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

SECTION 1. Section 39006 is added to the Education Code, to read:

39006. (a) Prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:

(1) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.

(2) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.

(3) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite.

(b) Subdivision (a) shall not apply to any schoolsite approved by the State Department of Education prior to January 1, 1997.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

AN ACT to amend Sections 8802, Code, relating to family law.

[App

[Filed w

LE

AB 2165, Goldsmith: Children

(1) Existing law requires a court to make an examination of a child's legal guardian for more than one year prior to the independent adoption of the child.

This bill would authorize a court to make an examination of a child's legal guardian no more than one year prior to the independent adoption of the child. It would limit the fees that may be charged for the preplacement evaluation.

(2) Existing law authorizes a court to make an examination of a child's legal guardian for more than one year prior to the independent adoption of the child.

This bill would reduce this time period to no more than one year, with certain exceptions. It also would limit the fees that may be charged for the preplacement evaluation.

(3) Existing law provides for an independent adoption of a child, with the consent of the birth parents.

The bill would instead provide for an independent adoption of a child, prior to the filing of a petition by the Social Services or the delegated fees relating to the filing of the petition by the agency.

(4) Under existing law, after the birth of a child, the birth parents have 90 days to consent to the independent adoption of the child, with the consent of the birth parents.

This bill would authorize an adoption of a child, with the signing of the waiver.

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

SECTION 1. Section 8802 of the Family Code is amended.

8802. (a)(1) Any of the following persons, for the purpose, file a petition in the court:

(A) A grandparent, aunt, uncle,

(B) A person named in the will of the child who has no other parent ***

(C) A person with whom a child has lived for a substantial period of time.

(D) A legal guardian who has been appointed by a court. However, if the parent nominates another person to serve as guardian during a specified time period, or if the guardian dies or becomes incapacitated, the court may appoint another person to serve as guardian.

Additions or changes indicated by underlines; deletions by ~~strikethrough~~

pter 2 of Part 1 of Division 1 of
hall not charge in excess of 100
nt for that county for that fiscal
ices; however, if a minor has
any of the coverages listed in

n which an AFDC-FC grant is
ection 11350 and the statewide
Section 4050) of Chapter 2 of
etermining the correct amount of
umption set forth in Section

use, or other person liable for
state of the minor, shall not be
eclare the minor a dependent
ore the jurisdictional hearing.

is amended to read:

le for the support of a minor,
iable for the cost to the county
nder or other public attorney
e county for the legal services
nted pursuant to an order of
on liable for the support of a
ny cost to the county of legal
he minor or any other person
ng by the public defender or
venile court, or by an attorney
court. The liability of those
a joint and several liability.
use, or other person liable for
ate of the minor, shall not be
erson described in this section
ut pursuant to Section 300 is

is amended to read:

her provision of law, a parent
the probation department, or
ter care home or facility, or
partment, shall be liable for
while in the custody of the
e applicable:

ne or by written communica-
lease from custody and that
elative, is requested to take
rdian of the financial liability

ake delivery of the minor, in
ted by the probation officer
within 48 hours from the time
lare the minor a dependent
or before the jurisdictional

or fails to make a reasonable
ponsible relative, within 12
ours from the time of actual

/ asterisks * * *

receipt of the notice in any case where a petition to declare the minor a dependent child of the court pursuant to Section 300 was dismissed at or before the jurisdictional hearing.

(b) The liability established by this section, when combined with any liability arising under Section 903, shall not exceed one hundred dollars (\$100) for each 24-hour period, beginning when notice of release was actually received, or beginning 48 hours after notice of release was actually received in any case where a petition to declare the minor a dependent child of the court pursuant to Section 300 was dismissed at or before the jurisdictional hearing, in which a notified parent or guardian has failed to make a reasonable effort to take delivery of the minor, in person or through a responsible relative, in accordance with the request and instructions of the probation officer.

(c) The liability established by this section shall be limited by the financial ability of the parents, guardians, or other persons to pay. Any parent, guardian, or other person who is assessed under this section shall, upon request, be entitled to an evaluation and determination of ability to pay under the provisions of Section 903.45. Any parent, guardian, or other person who is assessed under this section shall also be entitled, upon petition, to a hearing and determination by the juvenile court on the issues of liability and ability to pay.

SEC. 4. Section 903.3 of the Welfare and Institutions Code is amended to read:

903.3. (a) The father, mother, spouse, or other person liable for the support of a minor person, the person himself or herself if he or she is an adult, or the estates of those persons shall, unless indigent, be liable for the cost to the county for any investigation related to the sealing and for the sealing of any juvenile court or arrest records pursuant to Section 781 pertaining to that person. The liability of those persons and estates shall be a joint and several liability.

(b) In the event a petition is filed for an order sealing a record, the father, mother, spouse, or other person liable for the support of a minor, that person if he or she is an adult, or the estate of that person, may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services.

(c) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the person himself or herself if he or she is an adult, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

SCHOOLS AND SCHOOL DISTRICTS—AGRICULTURAL LAND—SCHOOLSITES

CHAPTER 509

A.B. No. 1724

AN ACT to add Section 39006 to the Education Code, relating to school facilities.

[Approved by Governor September 14, 1996.]

[Filed with Secretary of State September 16, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, McPherson. School facilities: areas zoned for agricultural production.

Additions or changes indicated by underline; deletions by asterisks * * *

2463

EXHIBIT B

**STATS. 1976, C. 557, §1
EDUCATION CODE §15002.1**

CHAPTER 555

An act to amend Section 35786 of the Food and Agricultural Code, relating to milk.

[Approved by Governor August 24, 1976. Filed with Secretary of State August 25, 1976.]

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

SECTION 1. Section 35786 of the Food and Agricultural Code is amended to read:

35786. Market goat milk may be standardized to a milk fat content of not less than 3.0 percent. Market goat milk at the time of delivery to the consumer shall contain not less than 8.15 percent of solids not fat.

CHAPTER 556

An act to amend Section 41522 of the Food and Agricultural Code, relating to olives.

[Approved by Governor August 24, 1976. Filed with Secretary of State August 25, 1976.]

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

SECTION 1. Section 41522 of the Food and Agricultural Code is amended to read:

41522. In addition to any other marking or wording on the label, the label which covers the walls of a container of olives shall bear a statement of the net drained weight of the olives contained therein and, except for olives which are packed in clear glass, shall show a cut or imprint which represents the approximate size of the fruit.

CHAPTER 557

An act to amend Section 15002.1 of, to amend and renumber Section 15002.2 of, and to add Section 15002.2 to, the Education Code, relating to school building sites.

[Approved by Governor August 24, 1976. Filed with Secretary of State August 25, 1976.]

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

SECTION 1. Section 15002.1 of the Education Code is amended to read:

15002.1. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 15452 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective school site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the seismic safety element of the local general plan as provided in subdivision (f) of Section 65302 of the Government Code, the investigation shall include such geological and soil engineering studies by competent personnel as are needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No such studies need be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is defined as one which is shown on any map, or maps, compiled by the State Geologist pursuant to the provisions of Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of Education.

SEC. 2. Section 15002.2 is added to the Education Code, to read:

15002.2. Geological and soils engineering studies as described in Section 15002.1 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 15452 or, if the estimated cost exceeds ten thousand dollars (\$10,000), the reconstruction or alteration of or addition to any such school building for work which alters structural elements. The Department of General Services may require similar geological and soils engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No such studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 4 (commencing with Section 15451) of Chapter 2 of this division and to the Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

SEC. 3. Section 15002.2 of the Education Code is amended and renumbered to read:

15002.3. The reconstruction of any school on all or a portion of a site which has been used for public school purposes uninterruptedly since prior to 1890 may be financed through the State School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972 (Chapter 15.8 (commencing with Section 19946) of Division 14), if the legal title to such site or a portion thereof is held either by: (a) a city school district, or (b) a charter city, and a city school district has obtained or is in the process of obtaining a lease of not less than 50 years on such site or portion thereof from the charter city.

CHAPTER 558

An act to amend Section 31671.01 and Section 31671.6 of the Government Code, relating to County Employees Retirement Law of 1937.

[Approved by Governor August 24, 1976. Filed with Secretary of State August 25, 1976.]

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

SECTION 1. Section 31671.01 of the Government Code is amended to read:

31671.01. This section shall apply to any county subject to the provisions of Section 31676.11, 31676.13, 31676.14, or 31676.15. On January 1, 1977, every member, who had attained age 65 shall be retired forthwith. Thereafter, every member shall be retired as of the first day of the calendar month next succeeding that in which he attains age 65.

This section shall not apply to any officer holding an elective office.

SEC. 2. Section 31671.6 of the Government Code is amended to read:

31671.6. In any county subject to the provisions of Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, or 31676.15 every officer holding an elective office shall be retired at the end of the first term to which he is elected which commences on a date following his 70th birthday.

EXHIBIT C

**STATS. 1976, C. 1010, §2
EDUCATION CODE § 39002**

Section 41330) of Chapter 3 of Part 24 of this division. In no event, however, shall the school district receive apportionments in a total amount in excess of the amount determined pursuant to this article.

37644. Any school district with an average daily attendance of more than 500 which, prior to July 1, 1979, converts one or more schools to a continuous school program pursuant to this chapter, shall, upon the approval of the Superintendent of Public Instruction, receive from funds appropriated for this purpose, a one-time grant not to exceed twenty-five thousand dollars (\$25,000). School districts already operating continuous school programs on effective date of this section shall be eligible for the grant.

Any school district with an average daily attendance of 500 or less, which, prior to July 1, 1979, converts one or more schools to a continuous school program pursuant to this chapter, shall, upon the approval of the Superintendent of Public Instruction, receive from funds appropriated for this purpose, a one-time grant not to exceed five thousand dollars (\$5,000).

37645. The Superintendent of Public Instruction may require the submission of such reports and information as designated by the Department of Education to properly evaluate all programs established pursuant to this chapter.

The Superintendent of Public Instruction shall compile and disseminate evaluations of the instructional and financial aspects of these programs.

PART 23. SCHOOL FACILITIES

CHAPTER 1. SCHOOL SITES

Article 1. General Provisions

39000. The State Department of Education shall establish standards for school sites.

39001. The governing board of any school district may, and when so directed by a vote of the voters within the district shall, purchase or improve school lands.

39002. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 39141 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. The investigation shall include such geological and soil engineering studies by competent personnel as are needed to provide an assessment of the nature of the site and potential for earthquake damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological characteristics are such that the construction effort

required to make the site safe for occupancy is economically unfeasible. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

No school building shall be constructed or situated on the trace of an active geological fault. For purposes of this section, an active geological fault is defined as one along which surface rupture can be reasonably expected to occur within the life of the building.

Similar geological and soil engineering investigations shall be made as deemed necessary by the Department of General Services for the construction of any school building as defined in Section 39141 or, if the estimated cost exceeds ten thousand dollars (\$10,000), the reconstruction or alteration of or addition to any such school building for work which alters structural elements. No such study need be made if the site or sites under consideration have been the subject of adequate prior study.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services and the Department of Education pursuant to Article 3 (commencing with Section 39140) of Chapter 2 of this part. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

39003. The reconstruction of any school on all or a portion of a site which has been used for public school purposes uninterruptedly since prior to 1890 may be financed through the State School Building and Earthquake Reconstruction and Replacement Bond Law of 1972 (Chapter 19 (commencing with Section 17400) of Part 10 of Division 1 of Title 1), if the legal title to such site or a portion thereof is held either by: (a) a city school district, or (b) a charter city and a city school district has obtained or is in the process of obtaining a lease of not less than 50 years on such site or portion thereof from the charter city.

39004. To promote the safety of pupils and comprehensive community planning the governing board of each school district before acquiring title to property for a new school site or for an addition to a present school site, shall give the planning commission having jurisdiction notice in writing of the proposed acquisition. The planning commission shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site.

The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days

EXHIBIT D

**STATS. 1977, C. 36, §141
EDUCATION CODE §39002**

pupil per week.

Attendance at classes conducted on Saturday or Sunday, or both, shall be at the election of the pupil or, in the case of a minor pupil, the parent or guardian of the pupil.

Except as otherwise provided in this code, any class which is offered on a Saturday or Sunday shall be one offered during the regular Monday through Friday school week.

The voluntary attendance of pupils in approved programs for mentally gifted minors, as defined in Section 52200, in special educational activities conducted on Saturday or Sunday shall not be included in the computation of the average daily attendance of the district.

SEC. 141. Section 39002 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

39002. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 39141 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective school site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the seismic safety element of the local general plan as provided in subdivision (f) of Section 65302 of the Government Code, the investigation shall include such geological and soil engineering studies by competent personnel as are needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No such studies need be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is defined as one which is shown on any map, or maps, compiled by the State Geologist pursuant to the provisions of Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of Education.

SEC. 142. Section 39140 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

39140. The Department of General Services under the police power of the state shall supervise the design and construction of any

school building or, if the dollars (\$20,000), the record any school building, to ens with the rules and regulati building regulations publis and to ensure that the wor accordance with the app protection of life and pr construced to allow a scho forces in excess of the limit

SEC. 143. Section 39143. Chapter 1010 of the Statu

39143. The Departmc approve or reject all pla cost exceeds twenty thousand school building. To ana school district and any o plans for such school Department of General prescribed in this articl

Where the estimated dollars (\$10,000) but less than (\$20,000), a structural en to determine if it is a alteration. If he determ alteration, he shall pre determines that the projec specifications for the p construction. A copy of t does not affect structur specifications for structu with the Department of

SEC. 144. Section 39144. Chapter 1010 of the Statu

39149. As of January 1, record to inspect the const school building shall be construction inspectors i as defined by Section 91 (b) persons who are enforcement by the lo inspection, and are qual civil service laws or reg

Persons employed as registered construction inspectors-in-training in as defined by Section 91. This section shall not apply to engineer, land surve

EXHIBIT E

**STATS. 1984, C. 1009, §1
EDUCATION CODE §39002**

CHAPTER 1009

An act to amend Sections 39002 and 81003 of the Education Code, to amend Sections 27720, 51115, 65300, 65301, 65302, 65302.3, 65400, 65403, 65585, 65587, 65854, 65856, 65858, 65867, 65901, 66451.3, 66477, 66479, 66484, and 66484.5 of, to add Sections 65010, 65300.9, 65303, and 65905 to, to add Chapter 2.7 (commencing with Section 65090) to Division 1 of Title 7, and to add Article 6 (commencing with Section 65350) and Article 8 (commencing with Section 65450) to Chapter 3 of Division 1 of Title 7 of, to repeal Sections 65302.2, 65302.4, 65302.5, 65302.6, 65302.7, 65303, 65304, 65305, 65306, 65801, 65854.5, 65905, 66451.4, and 66451.5 of, to repeal Article 6 (commencing with Section 65350), Article 7.5 (commencing with Section 65420), Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Division 1 of Title 7 of, and to repeal Chapter 5 (commencing with Section 66100) of Division 1 of Title 7 of, the Government Code, to amend Sections 56032 and 56037 of the Health and Safety Code, and to amend Sections 21080.7, 21080.10, 30108.55, and 30500 of the Public Resources Code, relating to planning.

[Approved by Governor September 11, 1984. Filed with Secretary of State September 11, 1984.]

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

SECTION 1. Section 39002 of the Education Code is amended to read:

39002. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 39141 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective school site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site

with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the State Department of Education.

SEC. 1.1. Section 81033 of the Education Code is amended to read:

81033. The governing board of a community college district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 81131 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective college site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geological hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a college in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the board of governors.

SEC. 1.2. Section 27720 of the Government Code is amended to read:

27720. The board of supervisors of any county may establish the office of county hearing officer. The duties of the office are to

EXHIBIT F

STATS. 1994, C. 840, §10 [AB 3562]
EDUCATION CODE §39002

commission chairperson to the Superintendent of Public Instruction, the Governor, and to appropriate Members of the Legislature.

SEC. 9. Section 35275 of the Education Code is amended to read:

35275. The governing board of any school district shall meet with appropriate local government recreation and park authorities to review all possible methods of coordinating planning, design, and construction of new school facilities and * * * schoolsites or major additions to existing school facilities and recreation and park facilities in the community.
* * *

SEC. 10. Section 39002 of the Education Code is amended to read:

39002. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 39141 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective * * * schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.
* * *

SEC. 11. Section 41375 of the Education Code is amended to read:

41375. It is the intent and purpose of the Legislature to encourage, by every means possible, the reduction of class sizes and the ratio of pupils to teachers in all grade levels in the public schools, and to urge every effort to this end to be undertaken by the local school administrative authorities. * * *

SEC. 12. Section 41380 of the Education Code is amended to read:

41380. The Covina Valley Unified School District may conduct an experimental kindergarten program pursuant to this section.

The provisions of Section 45342, of subdivision (a) of Section 45347, and of Sections¹ 41378 * * * are not applicable to the experimental kindergarten program which may be conducted by the Covina Valley Unified School District in three schools which has been approved by the Superintendent of Public Instruction.
* * *

SEC. 13. Section 42127.8 of the Education Code is amended to read:

42127.8. (a) The governing board provided for in subdivision (b) shall establish a unit to be known as the County Office Fiscal Crisis and Management Assistance Team. The team shall consist of persons having extensive experience in school district budgeting, accounting, data processing, risk management, food services, pupil transportation, purchasing and warehousing, facilities maintenance and operation, personnel administration, organization, and staffing. The Superintendent of Public Instruction may appoint one employee of the State Department of Education to serve on the unit. The unit shall be operated under the

¹ So in enrolled bill.

EXHIBIT G

STATS. 1996, C. 277, §3 [SB 1562]
EDUCATION CODE §17212

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars (\$400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES

CHAPTER 1. SCHOOLSITES

Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing.

17212. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

17212.5. Geological and soil engineering studies as described in Section 17212 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 17283, or if the estimated cost exceeds twenty thousand dollars (\$20,000), for the reconstruction or alteration of or addition to any school building for work

EXHIBIT H

EDUCATION CODE §39001

WEST'S ANNOTATED CALIFORNIA CODES
EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY EDUCATION
DIVISION 3. LOCAL ADMINISTRATION
PART 23. SCHOOL FACILITIES
CHAPTER 1. SCHOOL SITES
ARTICLE 1. GENERAL PROVISIONS

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Current through 1997 portion of 1997-98 Reg. Sess. and 1st Ex. Sess.

§ 39001. Public hearing for evaluation prior to acquisition in accordance with site selection standards

Prior to commencing the acquisition of real property for a new school site or an addition to an existing school site, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 39101. The governing board may direct the district's advisory committee established pursuant to Section 39296 to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing.

CREDIT(S)

1993 Main Volume

(Added by Stats.1991, c. 846 (A.B.1603), § 12.)

<<PART 23. SCHOOL FACILITIES>>

<<REPEAL>>

<Part 23 is repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998.>

<For another Part 23, Supplemental Services, added by Stats.1996, c. 277 (S.B.1562), § 5, operative Jan. 1, 1998, see Education Code § 38000 et seq.>

REPEAL

<Part 23 is repealed by Stats.1996, c. 277 (S.B.1562), § 6, operative Jan. 1, 1998. See Disposition Table preceding § 39000.>

West's Ann. Cal. Educ. Code § 39001

CA EDUC § 39001

END OF DOCUMENT

EXHIBIT I

CALIFORNIA ADMINISTRATIVE CODE

§14010

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS**Title 5. Education****Division 1. State Department of Education****Chapter 13. School Facilities and Equipment****Subchapter 1. School Housing****Article 2. School Sites**

§ 14010. Standards for School Site Selection.

All districts shall select a school site that provides safety and that supports learning. The following standards shall apply:

(a) The acreage and enrollment for a new school site shall be consistent with the numbers of acres and enrollment established on pages 14-20 of the 1966 Edition, "School Site Analysis and Development" published by the California State Department of Education as last amended in 1987 and incorporated into this section by reference, in toto, unless sufficient land is not available or circumstances exist due to any of the following:

(1) Urban or suburban development results in insufficient available land even after considering the option of eminent domain.

(2) Sufficient acreage is available but it would not be economically feasible to mitigate geological or environmental hazards or other site complications which pose a threat to the health and/or safety of students and staff.

(3) Sufficient acreage is available but not within the attendance area of the unhoused students or there is an extreme density of population within a given attendance area requiring a school to serve more students on a single site. Choosing an alternate site would result in extensive long-term bussing of students that would cause extreme financial hardship to the district to transport students to the proposed school site.

(4) Geographic barriers, traffic congestion, or other constraints would cause extreme financial hardship for the district to transport students to the proposed school site.

(b) If a school site is less than the recommended acreage required in subsection (a) of this section, the district shall demonstrate how the students will be provided an adequate educational program including physical education as described in the district's adopted course of study.

(c) The property line of the site even if it is a joint use agreement as described in subsection (o) of this section shall be at least the following distance from the edge of respective power line easements:

(1) 100 feet for 50-133 KV line.

(2) 150 feet for 220-230 KV line.

(3) 350 feet for 500-550 KV line.

(d) The site shall be a sufficient distance from a railroad track easement, as ascertained by an analysis of the cargo, speed, grade, curves, and/or type of track (mainline or spur) to determine that it poses no personal injury or property damage risk on the school site in the event of a derailment or other disaster.

(e) The site shall not be adjacent to a road or freeway that any site-related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program.

(f) The site shall not contain an active earthquake fault or fault trace.

(g) The site is not within an area of flood or dam flood inundation unless the cost of mitigating the flood or inundation impact is reasonable.

(h) The site shall not be located near an above-ground water or fuel storage tank that can pose a safety hazard as determined by a risk analysis study.

(i) The site is not subject to moderate to high liquefaction or landslides.

(j) The shape of the site shall have a proportionate length to width ratio to accommodate the building layout, parking and playfields that can be safely supervised and does not exceed the allowed passing time to classes for the district.

(k) The site shall be easily accessible from arterial roads and shall allow minimum peripheral visibility from the planned driveways in accordance with the Sight Distance Standards established in the "Highway Design Manual," Table 201.1, published by the Department of Transportation, July 1, 1990 edition, and incorporated into this section by reference, in toto.

(l) The site shall not be on major arterial streets with a heavy traffic pattern as determined by site-related traffic studies including those that require student crossings unless mitigation of traffic hazards and a plan for the safe arrival and departure of students appropriate to the grade level has been provided by city, county or other public agency in accordance with the "School Area Pedestrian Safety" manual published by the California Department of Transportation, 1987 edition, incorporated into this section by reference, in-toto.

(m) Existing or proposed zoning of the surrounding properties shall be compatible with schools in that it would not pose a potential health or safety risk to students or staff in accordance with Education Code Section 39003 and Government Code Section 65402 and available studies of traffic surrounding the site.

(n) The site shall be located within the proposed attendance area to encourage student walking and avoid extensive bussing unless bussing is used to promote ethnic diversity.

(o) The site shall be selected to promote joint use of parks, libraries, museums and other public services, the acreage of which may be included as part of the recommended acreage as stated in subsection (a) of this section.

(p) The site shall be conveniently located for public services including but not limited to fire protection, police protection, public transit and trash disposal whenever feasible.

(q) The district shall consider environmental factors of light, wind, noise, aesthetics, and air pollution in its site selection process.

(r) Easements on or adjacent to the site shall not restrict access or building placement.

(s) The cost and complications of the following shall be considered in the site selection process and should not result in undue delays or unreasonable costs consistent with State Allocation Board standards:

(1) Distance of utilities to the site, availability and affordability of bringing utilities to the site.

(2) Site preparation including grading, drainage, demolition, hazardous cleanup, including cleanup of indigenous material such as serpentine rock, and off-site development of streets, curbs, gutters and lights.

(3) Eminent domain, relocation costs, severance damage, title clearance and legal fees.

(4) Long-term high landscaping or maintenance costs.

(5) Existence of any wildlife habitat that is on a protected or endangered species list maintained by any state or federal agency, existence of any wetlands, natural waterways, or areas that may support migratory species, or evidence of any environmentally sensitive vegetation.

(l) At the request of the governing board of a school district, the State Superintendent of Public Instruction may grant exemptions to any of the standards in this section if the district can demonstrate that mitigation of specific circumstances overrides a standard without compromising a safe and supportive school environment.

Note: Authority cited: Section 39101(b), Education Code. Reference: Sections 39002, 39003, 39101(a), and 39101(f), Education Code; Section 65402, Government Code; Sections 21372, 22350, 22352, 22358.4, and 22358.5, Vehicle Code.

History

1. Renumbering of former section 14010 to section 14011 and new section filed 11-12-93; operative 12-13-93 (Register 93, No. 46). For prior history, see Register 77, No. 39.

5 CA ADC s 14010
END OF DOCUMENT

EXHIBIT J

LEGISLATIVE COUNSEL'S DIGEST

CHAPTER 509, STATUTE OF 1996

Citation CA LEGIS 509 (1996) 1996 Cal. Legis. Serv. Ch. 509 (A.B. 1724) (WEST)	Search Result	Rank 1 of 1	Database CA-LEGIS-OLD
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CALIFORNIA 1996 LEGISLATIVE SERVICE
1996 Portion of 1995-96 Regular Session
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Additions are indicated by <<+ Text +>>; deletions by
<<- * * * ->>. Changes in tables are made but not highlighted.

CHAPTER 509
A.B. No. 1724
SCHOOLS AND SCHOOL DISTRICTS--AGRICULTURAL LAND--SCHOOLSITES

Ch. 509

AN ACT to add Section 39006 to the Education Code, relating to school facilities.

[Approved by Governor September 14, 1996.]

[Filed with Secretary of State September 16, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, McPherson. School facilities: areas zoned for agricultural production.

(1) Under existing law, prior to commencing the acquisition of real property for a new schoolsite, the governing board of a school district is required to evaluate the property at a public hearing using the site selection standards established by the State Department of Education.

This bill would provide that prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of the school district shall make certain findings, including a finding that the school district will attempt to minimize any public health and safety issues resulting from the agricultural uses that may affect the pupils and employees at the schoolsite.

By imposing additional duties on the governing boards of school districts, the bill would impose a state-mandated local program.

(2) 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

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CA LEGIS 509 (1996)

509

costs exceed \$1,000,000.

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

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

Ch. 509 , S 1

SECTION 1. Section 39006 is added to the Education Code, to read:

<< CA EDUC § 39006 >>

39006. (a) Prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:

(1) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.

(2) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.

(3) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite.

(b) Subdivision (a) shall not apply to any schoolsite approved by the State Department of Education prior to January 1, 1997.

Ch. 509 , S 2

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

A LEGIS 509 (1996)

END OF DOCUMENT

EXHIBIT K

DECLARATION OF WILLIAM B. BRISTOW

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Test Claim Of: _____ } CSM NO. _____
**BRENTWOOD UNION SCHOOL } DECLARATION OF WILLIAM B. BRISTOW OF
DISTRICT } BRENTWOOD UNION SCHOOL DISTRICT IN
 } SUPPORT OF TEST CLAIM CSM NO. _____
 } (ACQUISITION OF AGRICULTURAL LAND
 } FOR A SCHOOL SITE)**

I, William B. Bristow, Construction and Facilities Consultant to the Brentwood Union School District, make the following declaration and statement.

1. In my capacity as a consultant to the Brentwood Union School District for construction and facilities, I am responsible for land acquisition. I am familiar with the new requirements of Education Code §39006, as added to the Education Code by Chapter 509, Statutes of 1996 (effective January 1, 1997). Education Code §39006 requires the Brentwood Union School District to perform additional duties prior to the commencement of purchasing land for use as a school site. These duties are:

1. Develop and adopt policies and procedures in accordance with Education Code §39006 for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based upon all factors affecting the public interest, not limited to selection on the basis of the cost of the land.
4. Prior to the commencement of purchasing property for any school site:

- a. Research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and
 - b. Research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. Notify the city, county, or city and county within which the prospective school site is located.
 - b. Consult with the city, county, or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located.
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.
7. Conduct a meeting of the governing board so that the governing board may make the findings required by Education Code §39006 (i.e., Chapter 509, Statutes of 1996).
8. Prepare and draft a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county,

or city and county within which the prospective school site is to be located.

- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

3. It is estimated that the Brentwood Union School District incurred more in \$1,600 in staffing, contracting costs, training and notice requirements for the fiscal year 1996/97, in meeting the duties mandated by Chapter 509, Statutes of 1996. The District has not been reimbursed for these costs, nor is it eligible for reimbursement by any federal, state or local governmental agency.

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 and belief and where so stated I declare that I believe them to be true.

Executed this 22 day of July, 1998, in Brentwood, California.



William B. Bristow

EXHIBIT L

DECLARATION OF DENISE WAKEFIELD

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Test Claim Of: _____ } CSM NO. _____
**BRENTWOOD UNION SCHOOL } DECLARATION OF DENISE WAKEFIELD OF
DISTRICT } BRENTWOOD UNION SCHOOL DISTRICT IN
 } SUPPORT OF TEST CLAIM CSM NO. _____
 } (ACQUISITION OF AGRICULTURAL LAND
 } FOR A SCHOOL SITE)**

I, Denise Wakefield, Finance and Facilities Analyst, Brentwood Union School District, make the following declaration and statement.

1. In my capacity as Finance and Facilities Analyst, I am responsible for the site acquisition process and obtaining approvals by the appropriate state and local agencies. I am familiar with the new requirements of Education Code §39006, as added to the Education Code by Chapter 509, Statutes of 1996 (effective January 1, 1997). Education Code §39006 requires the Brentwood Union School District to perform additional duties prior to the commencement of purchasing land for use as a school site. These duties are:

1. Develop and adopt policies and procedures in accordance with Education Code §39006 for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based upon all factors affecting the public interest, not limited to selection on the basis of the cost of the land.
4. Prior to the commencement of purchasing property for any school site:

- a. Research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and
 - b. Research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. Notify the city, county, or city and county within which the prospective school site is located.
 - b. Consult with the city, county, or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located.
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.
7. Conduct a meeting of the governing board so that the governing board may make the findings required by Education Code §39006 (i.e., Chapter 509, Statutes of 1996).
8. Prepare and draft a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county,

or city and county within which the prospective school site is to be located.

- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

3. It is estimated that the Brentwood Union School District incurred more in \$1,600 in staffing, contracting costs, training and notice requirements for the fiscal year 1996/97, in meeting the duties mandated by Chapter 509, Statutes of 1996. The District has not been reimbursed for these costs, nor is it eligible for reimbursement by any federal, state or local governmental agency.

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 and belief and where so stated I declare that I believe them to be true.

Executed this 31 day of July, 1998, in Brentwood, California.

Denise Wakefield
Denise Wakefield, Finance and Facilities
Analyst

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
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TEST CLAIM FORM

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**COMMISSION ON
STATE MANDATES**

TEST CLAIM NUMBER:
98-TC-04

LOCAL AGENCY OR SCHOOL DISTRICT SUBMITTING CLAIM

Brentwood Union School District

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THIS TEST CLAIM ALLEGES THE EXISTENCE OF A REIMBURSABLE STATE MANDATED PROGRAM WITHIN THE MEANING OF SECTION 17514 OF THE GOVERNMENT CODE AND SECTION 6, ARTICLE XIII B OF THE CALIFORNIA CONSTITUTION. THIS TEST CLAIM IS FILED PURSUANT TO SECTION 17551(A) OF THE GOVERNMENT CODE.

IDENTIFY SPECIFIC SECTION(S) OF THE CHARTERED BILL OR EXECUTIVE ORDER ALLEGED TO CONTAIN A MANDATE, INCLUDING THE PARTICULAR STATUTORY CODE SECTION(S) WITHIN THE CHARTERED BILL, IF APPLICABLE.

Statutes of 1996, Chapter 509 (AB 1724) Education Code Sections 17213.1, 17215.5, and 39006
Statutes of 1999, Chapter 1002 (SB 162)
Statutes of 2000, Chapters 135 (AB 2539) and 443 (AB 2644)

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

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

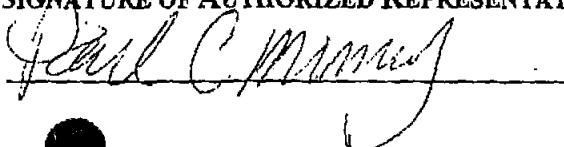
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Authorized Representative of Claimant,
Brentwood Union School District

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDED TEST CLAIM:
Brentwood Union School District

CSM No. 98-TC-04

Statutes of 1996, Chapter 509 (AB 1724)
Statutes of 1999, Chapter 1002 (SB 162)
Statutes of 2000, Chapters 135 (AB 2539) and
443 (AB 2644)

Education Code Sections 17213.1, 17215.5,
and 39006

*Acquisition of Agricultural Land for a School
Site*

Acquisition of Agricultural Land for a School Site

Table of Contents

I. TEST CLAIM EXECUTIVE SUMMARY

A. SUMMARY OF THE ORIGINAL TEST CLAIM FILING	1
B. OVERVIEW OF THE NEW TEST CLAIM LEGISLATION.....	1
C. OVERVIEW OF MANDATES LAW	2
D. QUESTIONS PRESENTED	
1. "PROGRAM"	2
2. "NEW PROGRAM \ HIGHER LEVEL OF SERVICE".....	2
3. "COSTS MANDATED BY THE STATE"	3
E. CONCLUSION.....	3

II. TEST CLAIM ANALYSIS

A. SUMMARY OF THE ORIGINAL TEST CLAIM FILING	6
B. OVERVIEW OF THE NEW TEST CLAIM LEGISLATION.....	7
C. ANALYSIS	
1. "PROGRAM"	9
2. "NEW PROGRAM \ HIGHER LEVEL OF SERVICE".....	11
3. "COSTS MANDATED BY THE STATE"	15
B. CONCLUSION.....	15

III. CLAIM REQUIREMENTS

A. AUTHORITY FOR THE CLAIM.....	18
B. ESTIMATED COSTS RESULTING FROM THE MANDATE	18
C. APPROPRIATIONS.....	18
D. CLAIM CERTIFICATION	18
E. DECLARATION OF DENISE WAKEFIELD.....	19

IV. EXHIBITS

A. Statutes of 1999, Chapter 1002 (SB 162)	TAB M
B. Statutes of 2000, Chapter 135 (AB 2539).....	TAB N
C. Statutes of 2000, Chapter 443 (AB 2644).....	TAB O
D. Education Code Section 17213.1.....	TAB P

E. Education Code Section 17215.5.....TAB Q

TEST CLAIM EXECUTIVE SUMMARY

SUMMARY OF THE ORIGINAL TEST CLAIM FILING

On August 14, 1998, Brentwood Unified School District filed the *Acquisition of Agricultural Land for a School Site Test Claim* (CSM 98-TC-04). The original test claim filing alleged that Statutes of 1996, Chapter 509 imposed a reimbursable state-mandated program upon school districts. On January 26, 1999, the Department of Finance (DOF) filed a letter outlining its position on the claimed activities. DOF agreed that several activities were state-mandated. However, DOF contended that some of the activities claimed were either required under prior law or where not required under the test claim legislation and therefore did not constitute reimbursable state-mandated activities.

OVERVIEW OF THE NEW TEST CLAIM LEGISLATION

Statutes of 1999, Chapter 1002 and Statutes of 2000, Chapter 443 added and amended Education Code section 17213.1, which requires the governing board of a school district to engage in one of the following activities before acquiring a school site:

- a. Contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment; or
- b. If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment.

Statutes of 2000, Chapter 135, section 39 (AB 2539) renumbered Education Code section 39006 to section 17215.5.

OVERVIEW OF MANDATES LAW

For the Commission on State Mandates (Commission) to find that the test claim legislation imposes a reimbursable state mandated program, the legislation: (1) must be subject to article XIII B, section 6 of the California Constitution, or in other words, the legislation must impose a "program" upon local governmental entities; (2) the "program" must be new, thus constituting a "new program," or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated within the meaning of Government Code section 17514.

QUESTIONS PRESENTED

1. **Does the Test Claim Legislation Impose a "Program" Upon School Districts Within the Meaning of the Article XIII B, Section 6 of the California Constitution by Requiring Additional Activities Before Acquiring Agricultural Land for a School Site?**

Short Answer: YES. The test claim legislation requires school districts to perform numerous activities when acquiring agricultural land for a school site. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Furthermore, the test claim legislation only applies to public schools and as such imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, these activities constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. **Does the Test Claim Legislation's "Program" Represent a "New Program" or a "Higher Level of Service" Imposed Upon School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Requiring Additional Activities Before Acquiring Agricultural Land for a School Site?**

Short Answer: YES. The test claim legislation activities are in excess of the requirements outlined in prior law, which required school districts to perform several

activities before a governing board of a school district could acquire agricultural land for a school site. However, the test claim legislation imposed additional activities upon school districts not required under prior law. Therefore, the activities associated with acquiring agricultural land for a school site imposed upon school districts by the test claim legislation represents a "new program" or "higher level of service" within the meaning of article XIII B, section 6 of the California Constitution.

3. Does the Test Claim Legislation's "Program," Which Represents a "New Program" or "Higher Level of Service," Impose "Costs Mandated by the State" Upon School Districts Within the Meaning of Government Code Section 17514?

Short Answer: YES. None of the "exceptions" listed in Government Code section 17556 apply and state law was not enacted in response to any federal requirement. Therefore, the test claim legislation does impose costs mandated by the state upon school districts.

CONCLUSION

The following activities represent reimbursable state-mandated activities imposed upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

1. Developing and adopting policies and procedures in accordance with Education Code section 17215.5 (formerly § 39006) for the acquisition of real property for a school site;
2. Training of school district personnel regarding the requirements of acquiring real property for a school site designated as agricultural land;
3. *Before acquiring a school site:*

- a. Contracting with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a)) or
 - b. If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a)(4).)
4. Preparing a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues from the neighboring agricultural uses that may affect the pupils and employees at the school site; (Ed. Code, § 17215.5.)

5. Conducting a meeting of the governing board so that the governing board may make the findings required by Education Code section 17215.5 (formerly § 39006); (Ed. Code, § 17215.5.)
 6. Preparing and drafting a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site; (Ed. Code, § 17215.5.) and
 7. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.
-

TEST CLAIM ANALYSIS

SUMMARY OF THE ORIGINAL TEST CLAIM FILING

On August 14, 1998, Brentwood Unified School District filed the *Acquisition of Agricultural Land for a School Site* Test Claim (CSM 98-TC-04). The original test claim filing alleged that Statutes of 1996, Chapter 509 imposed a reimbursable state-mandated program upon school districts for the following activities:

1. Developing and adopting policies and procedures in accordance with Education Code section 39006 for the acquisition of real property for a school site;
2. Training school district personnel regarding the requirements of acquiring real property designated as agricultural land;
3. Evaluating the property based upon all factors affecting the public interest, not limited to selection on the basis of the cost of the land;
4. Before the commencement of purchasing property for any school site:
 - a. Research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and
 - b. Research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production;
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. Notify the city, county, or city and county within which the prospective school site is located; and
 - b. Consult with the city, county, or city and county within which the prospective school site is located;
6. Preparing a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and

- c. The school district will attempt to minimize any public health and safety issues from the neighboring agricultural uses that may affect the pupils and employees at the school site;
- 7. Conducting a meeting of the governing board so that the governing board may make the findings required by Education Code section 39006; and
- 8. Preparing and drafting a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

On January 26, 1999, the Department of Finance (DOF) filed a letter outlining its position on the claimed activities. DOF agrees that activities [1] and [2] constitute reimbursable state-mandated activities. However, DOF contends that activities [3], [4], and [5] were required under prior law and therefore do not constitute reimbursable state-mandated activities. Furthermore, DOF contends that activities [6], [7], and [8] are not required under Education Code section 39006. The Claimant finds that activities [3], [4], and [5] were part of prior law and therefore removes them from this amended Test Claim filing. However, legislation enacted since the original Test Claim filing requires school districts to engage in additional activities when acquiring agricultural land for a school site.

OVERVIEW OF THE NEW TEST CLAIM LEGISLATION

Statutes of 1999, Chapter 1002 and Statutes of 2000, Chapter 443 added and amended Education Code section 17213.1, which requires the governing board of a school district to engage in one of the following activities before acquiring a school site:

- a. Contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the

- governing board decides to proceed directly to a preliminary endangerment assessment; or
- b. If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment.

Statutes of 2000, Chapter 135, section 39 (AB 2539) renumbered Education Code section 39006 to section 17215.5.

ANALYSIS

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a program upon local governmental entities; (2) the program must be new, thus constituting a "new program," or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated.

The court has defined the term "program" to mean programs that carry out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state. To determine if a required program is "new" or imposes a "higher level of service," a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹ To determine if the new program or higher level of service is state mandated, a review of state and federal statutes, regulations, and case law must be undertaken.²

¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

² *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

1. Does the Test Claim Legislation Impose a "Program" Upon School Districts Within the Meaning of the Article XIII B, Section 6 of the California Constitution by Requiring Additional Activities Before Acquiring Agricultural Land for a School Site?

The test claim legislation added and amended sections to the Education Code, which require school districts to perform the following activities before acquiring agricultural land for a school site:

1. Develop and adopt policies and procedures in accordance with Education Code section 17215.5 (formerly § 39006) for the acquisition of real property for a school site;
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land;
3. *Contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a).) or*
4. *If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a)(4).)*
5. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues from the neighboring agricultural uses that may affect the pupils and employees at the school site; (Ed. Code, § 17215.5.)
6. Conduct a meeting of the governing board so that the governing board may make the findings required by Education Code section 17215.5 (formerly § 39006); (Ed. Code, § 17215.5.) and
7. Prepare and draft a board resolution with the following findings:

- a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site. (Ed. Code, § 17215.5.)

The California Supreme Court in *County of Los Angeles v. State of California*, defined "program" as:

"Programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."³

The California Appellate Court in *Carmel Valley Fire Protection District v. State of California*, found the following regarding the *County of Los Angeles* "program" holding:

"The [Supreme] Court concluded that the term 'program' has two alternative meanings: 'programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.' (Citation omitted.) *[O]nly one of these findings is necessary to trigger reimbursement.*"⁴ (Emphasis added.)

The test claim legislation clearly passes both tests outlined by *County of Los Angeles* and reiterated in *Carmel Valley*. First, the test claim legislation requires school districts to perform certain activities before acquiring agricultural land for a public school site. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public.⁵ Second, the test claim legislation only applies to public schools and as such imposes

³ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

⁴ *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537.

⁵ *Long Beach Unified School Dist., supra* (1990) 225 Cal.App.3d 155, 172 (The court found that although numerous private schools exist, education in the state is considered a peculiarly governmental function and public education is

unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, performing these activities before acquiring agricultural land for a school site constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. Does the Test Claim Legislation's "Program" Represent a "New Program" or a "Higher Level of Service" Imposed Upon School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Requiring Additional Activities Before Acquiring Agricultural Land for a School Site?

To determine if a required program is "new" or imposes a "higher level of service," a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁶

Prior Law: Acquisition of Agricultural Land

Before acquiring agricultural land for a school site, a school district governing board was required to engage in the following activities under prior law: (1) evaluate the property at a public hearing; (2) give written notice of the proposed acquisition to the planning commission having jurisdiction over the property. The planning commission then prepared and submitted a report to the governing board. The governing board could not acquire title to the property until the report was received; (3) investigate the proposed site to ensure that the selection was determined by an evaluation of all factors affecting the public interest and was not limited to selection based on land cost only; (4) have geographical and soil engineering studies prepared if the land was within certain areas. Copies of all geographical and soil engineering studies must

administered by local agencies to provide a service to the public. Based on these findings, the court held that public education constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.)

⁶*Lucia Mar Unified School Dist, supra* (1988) 44 Cal.3d 830, 835 (The court found legislation that shifts activities from the state to a local entity represents a new program especially when the local entity was not required to perform that activity at the time the legislation was enacted. The court concluded that under these circumstances the activity is "new" insofar as the local entity is concerned.)

be filed with the Department of General Services and Department of Education; (5) prepare and consider an environmental impact report before the project was approved or denied; and (6) consult with the administering agency in which the proposed school site was located that might reasonably be contaminated.

Although prior law requires school districts to engage in certain activities before acquiring agricultural land for a school site, the test claim legislation added additional activities that districts must engage in before acquiring agricultural land.

Current Requirements: The Test Claim Legislation

The test claim legislation added and amended several sections of the Education Code related to the activities school districts must engage in before acquiring agricultural land for a school site. The following activities are new or impose a higher level of service when compared to prior law.

Test Claim Legislation Activity: Before acquiring a school site the governing board shall:

- a. *Contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site; (Ed. Code, § 17213.1, subd. (a.) or*
- b. *If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment. (Ed. Code, § 17213.1, subd. (a)(4).)*

Although prior law required school districts to have an environmental impact report prepared before acquiring agricultural land for a school site, the activities listed above are in addition to preparing such a report since the test claim legislation has not removed the environmental impact report requirement. Under current law, school district must complete the

environmental impact report and contract with an environmental assessor to supervise and sign a Phase 1 environmental assessment or prepare the environmental impact report and prepare a preliminary endangerment assessment. Based on the foregoing, these activities represent a new program imposed upon school districts within the meaning of article XIII B, section 6 of the California Constitution.

Test Claim Legislation Activity: Prepare a report for the governing board that will allow the board to make the following findings:

- a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
- c. The school district will attempt to minimize any public health and safety issues from the neighboring agricultural uses that may affect the pupils and employees at the school site. (Ed. Code, § 17215.5.)

While Education Code section 17215.5 does not specifically require the governing board to prepare a report of the preceding findings, district staff involved in the consultation with the city, county, or city and county would need to complete the report for the governing board to review. Without a report prepared for the governing board to review and act upon, the board could not meet the requirements outlined in section 17215.5. Therefore, the activities associated with preparing a report outlining the findings detailed in section 17215.5 represents a new program imposed upon school districts within the meaning of article XIII B, section 6 of the California Constitution.

Test Claim Legislation Activity: Conduct a meeting of the governing board so that the governing board may make the findings required by Education Code section 17215.5. Section 17215.5 requires the governing board to make specific findings, but it does not expressly provide

that the board hold a specific meeting relative to this issue. The claimant contends that the governing board must meet to make the findings required by the test claim legislation.

Education Code section 35145 provides:

"All meetings of the governing board of any school district shall be open to the public and shall be conducted in accordance with [the Ralph M. Brown Act]. *All actions authorized or required by law of the governing board shall be taken at the meetings and shall be subject to the following requirements:*

- "(a) Minutes shall be taken at all those meetings, recording all actions taken by the governing board. The minutes are public records and shall be available to the public.
- "(b) An agenda shall be posted by the governing board, or its designee, in accordance with the requirements of Section 54954.2 of the Government Code. Any interested person may commence an action by mandamus or injunction pursuant to Section 54960.1 of the Government Code for the purpose of obtaining judicial determination that any action taken by the governing board in violation of this subdivision or Section 35144 is null and void." (Emphasis added.)

As required by Education Code section 35145, the governing board of a school district must meet in accordance with the requirements outlined in the Brown Act, take minutes of the meeting, and prepare and post an agenda of the meeting in order to make the findings required by the test claim legislation. Therefore, the activities associated with board meetings to make the findings required by the test claim legislation represent a higher level of service imposed upon school districts within the meaning of article XIII B, section 6 of the California Constitution.

Test Claim Legislation Activity: Prepare and draft a board resolution with the following findings:

- a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and

- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site. (Ed. Code, § 17215.5.)

Although section 17215.5 does not specifically require a board resolution of the information outlined above, the claimant finds that a board resolution is a necessity to fulfill the intent of the test claim legislation. As previously discussed, Education Code section 35145 requires governing boards to meet to make the findings mandated by section 17215.5. The claimant contends that the board's findings must be memorialized in some fashion. A resolution is the most effective way to ensure that the governing board has met the requirements outlined in section 17215.5. Therefore, these activities represent a new program imposed upon school districts within the meaning of article XIII B, section 6 of the California Constitution.

3. Does the Test Claim Legislation's "Program," Which Represents a "New Program" or "Higher Level of Service," Impose "Costs Mandated by the State" Upon School Districts Within the Meaning of Government Code Section 17514?

None of the "exceptions" listed in Government Code section 17556 apply⁷ and state law was not enacted in response to any federal requirement. Therefore, the test claim legislation does impose costs mandated by the state upon school districts.

CONCLUSION

The following activities represent reimbursable state-mandated activities imposed upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

⁷ Government Code section 17556 provides several exceptions to reimbursement. Specifically, section 17556 provides that the Commission shall not find costs mandated by the state if it concludes that the test claim legislation: (1) is issued in response to a specific request by a local governmental entity; (2) implements a court mandate; (3) implements federal law; (4) can be financed through a fee or assessment charged by a local governmental entity; (5) provides for offsetting savings that result in no net costs to local governmental entities or includes additional revenue specifically intended to fund the costs of the mandate in an amount sufficient to fund the mandate; (6) implements a ballot proposition; or (7) creates a new crime or infraction, eliminates a crime or infraction, or changed the penalty for a crime or infraction related to the enforcement of the crime or infraction.

1. Developing and adopting policies and procedures in accordance with Education Code section 17215.5 (formerly § 39006) for the acquisition of real property for a school site;
2. Training of school district personnel regarding the requirements of acquiring real property for a school site designated as agricultural land;
3. *Before acquiring a school site:*
 - a. *Contracting with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a).) or*
 - b. *If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a)(4).)*
4. Preparing a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;

- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues from the neighboring agricultural uses that may affect the pupils and employees at the school site; (Ed. Code, § 17215.5.)
5. Conducting a meeting of the governing board so that the governing board may make the findings required by Education Code section 17215.5 (formerly § 39006); (Ed. Code, § 17215.5.)
6. Preparing and drafting a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site; (Ed. Code, § 17215.5.) and
7. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

AUTHORITY FOR THE TEST CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551, subdivision (a), to hear and decide a claim by a local agency or school district that the local agency or school district is entitled to reimbursement by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. Brentwood Union School District is a "school district" as defined in Government Code section 17519. This test claim is filed pursuant to Title 2, California Code of Regulations, section 1183.

ESTIMATED COSTS RESULTING FROM THIS MANDATE

It is estimated that Brentwood Union School District will incur costs in excess of \$200.00 to comply with the requirements outlined in the amended *Acquisition of Agricultural Land for a School Site* Test Claim.

APPROPRIATIONS

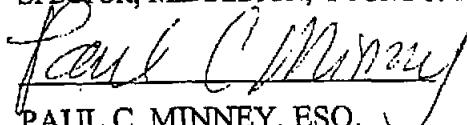
Any funds appropriated by the test claim legislation will be identified as offsetting savings against claimed costs at the Parameters and Guidelines phase.

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my knowledge, and as to all other matters, I believe them to be true and correct based on information or belief.

Executed on September 18, 2001 at Sacramento, California, by:

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP



PAUL C. MINNEY, ESQ.

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Attorney for Mandated Cost Systems, Inc. and
Authorized Representative of Claimant,
Trinity Union High School District

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

CSM No. 98-TC-04

In Re Amended Test Claim:
Brentwood Union School District

DECLARATION OF DENISE WAKEFIELD
Acquisition of Agricultural Land for a School Site

I, Denise Wakefield, make the following declaration and statement. As Finance and Facilities Analyst, I have knowledge of Brentwood Union School District's (claimant's) school site acquisition procedures and requirements. I am familiar with the provisions and requirements of Statutes of 1996, Chapter 509, Statutes of 1999, Chapter 1002, and Statutes of 2000, Chapters 135 and 443, which require school districts to perform the following activities:

1. Develop and adopt policies and procedures in accordance with Education Code section 17215.5 (formerly § 39006) for the acquisition of real property for a school site;
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land;
3. Before acquiring a school site:
 - a. Contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a).) or
 - b. If the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment; (Ed. Code, § 17213.1, subd. (a)(4).)
4. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and

- c. The school district will attempt to minimize any public health and safety issues from the neighboring agricultural uses that may affect the pupils and employees at the school site; (Ed. Code, § 17215.5.)
5. Conduct a meeting of the governing board so that the governing board may make the findings required by Education Code section 17215.5 (formerly § 39006); (Ed. Code, § 17215.5.) and
6. Prepare and draft a board resolution with the following findings:
 - a. The school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located;
 - b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and
 - c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site. (Ed. Code, § 17215.5.)

I am informed and believe that before the test claim legislation, there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$200.00 to implement these new activities mandated by the state for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

I know the foregoing facts 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 and belief and where

so stated I declare that I believe them to be true.

Executed on September 18, 2001 in Brentwood, California.

Denise Wakefield

DENISE WAKEFIELD
Finance and Facilities Analyst
Brentwood Union School District

Senate Bill No. 162

CHAPTER 1002

An act to add Sections 17210, 17210.1, and 17213.1 to, the Education Code, relating to school facilities.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 162, Escutia. School facilities: contamination.

Under the Leroy F. Greene School Facilities Act of 1998, an eligible school district may receive funding for new construction of school facilities.

Existing law prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a school by the school district unless specified actions are taken with regard to potential contamination of the site, including a determination by the lead agency, as defined, that the property purchased or to be built upon is not the site of a current or former hazardous waste disposal site or solid waste disposal site, or a hazardous substance release site.

This bill would provide that, as a condition of receiving funding under the Leroy F. Greene School Facilities Act of 1998, the governing board of a school district is prohibited from approving the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, from proceeding with the construction of a project, unless the governing board causes certain environmental assessments to be conducted that are reviewed and approved by the Department of Toxic Substances Control.

This bill would require the school district to reimburse the Department of Toxic Substances Control for all of its response costs and would provide that these costs may be reimbursed under the Leroy F. Greene School Facilities Act of 1998.

This bill would provide that a school district is not liable in any action filed against the district for making a preliminary endangerment assessment available for public review.

This bill would provide that the Carpenter-Presley-Tanner Hazardous Substance Account Act applies to schoolsites of school districts electing to receive state funds where naturally occurring hazardous materials are present, regardless of whether there has been a release of a hazardous material.

This bill would provide that it would not become operative unless and until AB 387 is chaptered and becomes operative.

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

SECTION 1. Section 17210 is added to Chapter 1 (commencing with Section 17210) of Part 10.5 of the Education Code, to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, a contractor who conducts Phase I environmental assessments shall have a least two years experience in the preparation of those assessments and a contractor who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action" and, "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on

reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site, may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 2. Section 17210.1 is added to the Education Code, to read:

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present; regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, the Department of Toxic Substances Control shall comply with Sections 25358.7 and 25358.7.1 of the Health and Safety Code.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) The Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 3. Section 17213.1 is added to the Education Code, to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to conduct a Phase I environmental assessment of the proposed schoolsite.

(1) The Phase I environmental assessment shall contain one of the following recommendations:

- (A) A further investigation of the site is not required.
- (B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:
 - (i) If a release of hazardous material has occurred and, if so, the extent of the release.
 - (ii) If there is the threat of a release of hazardous materials.
 - (iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to prepare a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The preliminary endangerment assessment shall contain one of the following conclusions:

- (A) A further investigation of the site is not required.
- (B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(4) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances

Control for its review and approval. The school district shall also make the preliminary endangerment assessment available to the public for review for not less than 30 calendar days.

(5) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either approve or disapprove the preliminary endangerment assessment.

(6) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(7) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(8) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(9) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a preliminary endangerment assessment, or information concerning a preliminary endangerment assessment, required by this section, may not be held liable in any action filed against the school district for making the preliminary endangerment assessment available for public review.

SEC. 4. Sections 1 to 3, inclusive, of this act shall not become operative unless and until Assembly Bill 387 of the 1999-2000 Regular Session is chaptered and becomes operative.

CHAPTER 135

An act to amend Sections 651, 680, 4112, 4982, 4998, 4998.2, 4998.5, 4998.6, 6086.65, and 17537.11 of the Business and Professions Code, to amend Sections 1102.2, 1103, and 2924c of the Civil Code, to amend Sections 131.4, 703.140, and 704.115 of the Code of Civil Procedure, amend Sections 1201, 2210, 2502, 9528, and 9706 of the Commercial Code, to amend Sections 5222, 7236, 14000, 14030, 14030.1, 14035, 14036, and 25207 of the Corporations Code, to amend Sections 1209, 17210, 17284.5, 17620, 23812, 24255, 35012, 35160.5, 37252, 44225.6, 44227, 44259, 44275.3, 44424, 47611.5, 47612.5, 51871.5, 54685.2, 54685.3, 60200.2, 60855, 66293, and 81149 of, to amend and renumber Section 39006 of, and to amend and renumber the heading of Chapter 8 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of, the Education Code, to amend Section 8040 of the Elections Code, to amend Sections 243, 2040, 3021, 4065, and 5002 of the Family Code, to amend Section 18210 of the Financial Code, to amend Section 55702 of the Food and Agricultural Code, to amend Sections 3540.1, 7222, 15346.9, 18935, 19827.3, 20395, 20397, 20677, 21070.5, 21071, 21073.7, 21370, 21572, 22825.01, 22875, 31469.5, 51298, 53601, 53635, 54985, 69915, 72114.2, and 91007 of the Government Code, to amend Sections 1357.50, 1368, 1368.04, 1370.4, 1374.32, 1386, 1507.3, 1596.7927, 25390.4, 32121.7, 33333.6, 33334.17, 44287, 51451, 104550, 104556, 104557, 112040, 115813, and 128375 of, and to amend and renumber Section 13933 of, the Health and Safety Code, to amend Sections 384, 791.02, 1035, 1765.1, 1874.81, 10123.68, 10145.3, 10169, 10169.2, 10176.61, 11629.92, and 12967 of, and to amend and renumber Sections 1785.89, 10140, 10141, and 12698 of, the Insurance Code, to amend Sections 1174.5, 1777.5, 1777.7, 3762, 6394.5, 6429, 6434, and 6650 of the Labor Code, to amend Sections 273.84, 296.1, 487c, 666, 830.32, 1463, 2962, 6129, 11166.3, 11170.6, 12000, and 13510 of the Penal Code, to amend Section 2357 of the Probate Code, to amend Section 12102 of the Public Contract Code, to amend Sections 2715.5, 31164, and 42923 of the Public Resources Code, to amend Sections 237, 2512, 2613, 6471, and 6472 of the Revenue and Taxation Code, to amend Sections 426, 1666, 5204, 9980, 12808, 12815, 13377, 16020.1, 21051, 22511.56, 34505.9, and 35790.1 of the Vehicle Code, to amend Sections 361.5, 727.3, 727.31, 827, 1788, 1789.5, 9564, 14105.26, and 25002 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 868 of the Statutes of 1998, and Section 7 of Chapter 84 of the Statutes of 1999, relating to maintenance of the codes.

[Approved by Governor July 19, 2000. Filed with
Secretary of State July 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2539, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 2000, and would not make any substantive change in the law.

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

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures

school are currently, or are likely to be, at capacity and, therefore, those schools or grade levels are unable to accommodate any new pupils under the open enrollment policy.

(4) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 38. Section 37252 of the Education Code is amended to read:

37252. (a) The governing board of each district maintaining any or all of grades 7 to 12, inclusive, shall offer and a charter school that maintains any or all of grades 7 to 12, inclusive, may offer summer school instructional programs, using the amount computed pursuant to Section 42239, for pupils enrolled in grades 7 to 12, inclusive, who do not demonstrate sufficient progress toward passing the exit examination required for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33. Sufficient progress shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupils' grades and other indicators of academic achievement designated by the district.

(b) The summer school programs shall also be offered to pupils who were enrolled in grade 12 during the prior school year after the completion of grade 12.

(c) (1) For purposes of this section a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade.

(2) For the purposes of this section, pupils who do not possess sufficient English language skills to be assessed as set forth in Sections 60850 and 60853, shall be considered pupils who do not demonstrate sufficient progress towards passing the exit examination required for high school graduation and shall receive supplemental instruction designed to assist pupils to succeed on the high school exit examination.

(d) Instructional programs may be offered pursuant to this section during the summer, after school, Saturday, or during intersession, or in any combination of summer, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday.

(e) This section shall become operative January 1, 2000.

SEC. 39. Section 39006 of the Education Code is amended and renumbered to read:

17215.5. (a) Prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for

agricultural production, the governing board of a school district shall make all of the following findings:

(1) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.

(2) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.

(3) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite.

(b) Subdivision (a) shall not apply to any schoolsite approved by the State Department of Education prior to January 1, 1997.

SEC. 40. Section 44225.6 of the Education Code is amended to read:

44225.6. (a) By January 10 of each year, the commission shall 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. This report shall include the following information:

(1) The number of individuals recommended for credentials by institutions of higher education.

(2) The number of individuals recommended by school districts operating district internship programs.

(3) The number of individuals receiving an initial credential based on a program completed outside of California.

(4) The number of individuals serving in the following capacities by subject matter, county, and school district:

- (A) University internship.
- (B) District internship.
- (C) Pre-Internship.
- (D) Emergency permit.
- (E) Credential waiver.

(5) 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.

(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

this discussion occurs, provided that it is broadly inclusive of all groups with an interest in universal health coverage.

(d) Interagency participation including, but not limited to, the State Department of Health Services, the State Department of Mental Health, the Department of Finance, the Managed Risk Medical Insurance Board, the Department of Consumer Affairs, the Public Employees' Retirement System, the State Department of Social Services, the Department of Corporations, the Department of Insurance, and any other appropriate agencies which the secretary determines can contribute to the effort to provide universal health coverage.

(e) Obtaining information from the United States Health Care Financing Administration regarding whether federal waivers or other forms of federal participation are necessary.

SEC. 174. Section 1 of Chapter 868 of the Statutes of 1998, as amended by Section 1 of Chapter 153 of the Statutes of 1999, is amended to read:

Section 1. (a) Commencing with the 1999-2000 school year, the area of Eastview as delineated in subdivision (c) is an optional attendance area. Parents and legal guardians residing in the area of Eastview may make an election for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999-2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview may make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000-01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by March 1 of the school year in which the pupil first enters elementary school, and shall make a second election by March 1 of the school year in which the pupil enters middle school. Parents and legal guardians residing in the area of Eastview may elect, for each of their children, whether to attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District twice during the time that their child attends school. This election may be made once during any time the child attends kindergarten or any of grades 1 to 8, inclusive, and be made once during the time the child attends any of grades 9 to 12, inclusive. Parents or legal guardians who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school. This section is applicable to all pupils who reside within the area of Eastview of Los Angeles County regardless of whether the pupil previously attended a private school.

(b) Any school facility belonging to the Los Angeles Unified School District that is located in the area delineated in subdivision (c)

shall remain the property of the Los Angeles Unified School District. The status of an employee as an employee of the Los Angeles Unified School District shall not be affected by this act.

(c) For the purposes of this section, the following are the boundaries of the area in Eastview in Los Angeles County: begin at the southeast corner of Tract #19028 as shown on map filed in book 587, pages 83 and 84, of maps in the office of the Recorder of the County of Los Angeles, said corner being angle point in the boundary of the City of Rancho Palos Verdes as same existed on November 1, 1978; thence northerly along the boundary of the City of Rolling Hills Estates as same existed on said date to its first intersection with the boundary of the City of Lomita as same existed on said date; thence easterly along said less mentioned boundary and following the same in all its various courses to the intersection of the northerly line of Lot 1 of Tract #3192 as shown on map filed in book 44, pages 91 to 94, inclusive; of said maps and the centerline of Western Avenue as shown on map filed in book 77, page 88, of record of surveys, in the office of said recorder; thence southerly along said centerline and continuing southerly along the centerline of Western Avenue as shown on map of Tract #24436 filed in book 653, pages 96 to 100, inclusive, of said maps to the centerline of Westmont Drive as shown on map of parcel map #5375 filed in book 63, pages 92 and 93, of parcel maps in the office of said recorder; thence continuing southerly along the centerline of Western Avenue as shown on said last mentioned map a distance of 67 feet; thence easterly at right angles from said last mentioned centerline a distance of 50 feet to the northerly terminus of that certain course having a bearing and length of N1343 feet 42 inches East along that certain 27 foot radius curve in said last mentioned boundary of the City of Rancho Palos Verdes, thence northerly along said last mentioned boundary to the point of beginning.

SEC. 175. Section 7 of Chapter 84 of the Statutes of 1999, as amended by Section 7 of Chapter 86 of the Statutes of 1999, is amended to read:

Sec. 7. For purposes of allocating one-half of the moneys appropriated by Item 9210-118-0001 of the Budget Act of 1999, all of the following apply:

(a) A county is prohibited from receiving any portion of the moneys unless the county complies with all of the following:

(1) No later than October 1, 1999, the county auditor reports to the Controller and the Director of Finance the total amount of ad valorem property tax revenue allocated from the county's Educational Revenue Augmentation Fund to school districts, community college districts, and county superintendents of schools for the 1998-99 fiscal year.

(2) The county board of supervisors adopts an ordinance or resolution that specifies each amount of ad valorem property tax

revenue shifted from a local agency within the county to the county's Educational Revenue Augmentation Fund for the 1998-99 fiscal year, and the chairperson of the county board of supervisors reports those revenue shift amounts to the Controller and the Director of Finance in a manner that identifies the revenue shift amount for each local agency in the county.

(3) The county board of supervisors adopts an ordinance or resolution pursuant to which the county agrees to both of the following:

(A) The county will allocate its share of the appropriated moneys subject to this section in accordance with subdivision (c).

(B) The county will not, in connection with either paragraphs (1) or (2) of this subdivision or subdivision (c), make any claim for reimbursement of state-mandated local costs.

No later than December 1, 1999, the county board of supervisors shall transmit the ordinance or resolution adopted pursuant to this paragraph to the Director of Finance. The Controller shall promulgate guidelines for the making of reports as required by this subdivision.

(b) For each county that complies with all of the conditions set forth in subdivision (a), the Controller shall do both of the following:

(1) Perform the following calculations:

(A) Divide the amount reported by the county auditor in accordance with paragraph (1) of subdivision (a) by the total of all of the amounts reported by all county auditors in accordance with paragraph (1) of subdivision (a).

(B) Divide the amount appropriated by Item 9210-118-0001 of the Budget Act of 1999 by two.

(C) Multiply the amount determined in accordance with subparagraph (A) by the amount determined in accordance with subparagraph (B).

For purposes of performing these calculations, the Controller shall review the information submitted by the county. If, consistent with information available from any other reliable source, the Controller determines that the information may be inaccurate, the Controller may request the Director of Finance to review the amount reported by the county in accordance with paragraph (1) of subdivision (a). The Director of Finance may direct the Controller to adjust the amount reported to the Controller by the county in accordance with paragraph (1) of subdivision (a). The Controller shall inform the county of any adjustment that is so made.

(2) No later than February 1, 2000, the Controller shall, from the appropriated revenues subject to this section, allocate to the county the amount determined for that county pursuant to paragraph (1).

(c) In each county that receives revenue in accordance with subdivision (b), the county auditor shall allocate that revenue to those local agencies among the county, and cities and special districts

in the county, that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1998-99 fiscal year. The allocation share for each recipient local agency shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1998-99 fiscal year from the local agency to the county's Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1998-99 fiscal year to the county's Educational Revenue Augmentation Fund by all local agencies in the county contributing a positive amount to that fund.

(2) Multiply the ratio determined pursuant to paragraph (1) by the amount of revenues allocated to the county pursuant to paragraph (2) of subdivision (b).

SEC. 176. Any section of any act enacted by the Legislature during the 2000 calendar year that takes effect on or before January 1, 2001, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2000 calendar year and takes effect on or before January 1, 2001, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

to address the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials.

(3) The site conditions will not pose a significant threat to the health and safety of workers involved with construction.

(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances Control certifies that all necessary response actions have been completed at a schoolsite. The Department of Toxic Substances Control shall also notify the Division of the State Architect whenever a response action has an impact on the design of a school facility and shall specify the conditions that must be met in the design of the school facility in order to protect the integrity of the response action.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

SEC. 6. 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. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that school districts receive state funding by complying with the Phase I environmental assessment requirement, it is necessary that this act take effect immediately.

Assembly Bill No. 2644

CHAPTER 443

An act to amend Sections 17210, 17210.1, 17213.1, and 17213.2 of, and to add Section 17072.18 to, the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 2000. Filed with Secretary of State September 14, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2644, Calderon. School facilities: contamination.

(1) Existing law defines "environmental assessor" for purposes of assessing proposed schoolsites for environmental hazards as a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment or a licensed hazardous substance contractor.

This bill would include in that definition a registered professional engineer, a registered geologist, and a registered certified engineer geologist.

(2) Existing law defines a "Phase I environmental assessment."

This bill would provide that a Phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions satisfies the requirements for conducting a Phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a Phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(3) Existing law requires the Department of Toxic Substances Control to comply with provisions of law regarding public participation in response actions undertaken for certain listed sites and community advisory groups established to review and comment on the response actions conducted in affected communities.

The bill would require a school district to provide a notice to residents in the immediate area, approved in form by the Department of Toxic Substances Control, prior to the commencement of work on a preliminary endangerment assessment, thereby imposing a state-mandated local program.

(4) Existing law requires the Department of Toxic Substances Control to comply with certain provisions of law when recovering its costs incurred in carrying out its duties with regard to schoolsites.

This bill would make that requirement contingent on the Legislature not otherwise funding the department's costs for overseeing the actions taken with regard to schoolsites.

(5) Existing law requires the governing board of a school district, as a condition of receiving state funding under the Leroy F. Greene School Facilities Act (Greene Act) of 1998, to have conducted a Phase I environmental assessment of a proposed schoolsite before acquiring the site.

This bill would require the Department of Toxic Substances Control, if it determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, to inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The bill would require the school district to take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition of the construction project. The bill would permit the State Allocation Board to provide funding for response costs of the removal of hazardous waste or substances at schoolsites in a school district that has not received Greene Act funds for site acquisition, but will undertake construction on the site in accordance with the Greene Act.

(6) Existing law immunizes a school district from liability in any action filed against the school district for making a preliminary endangerment assessment or information concerning that assessment available for public review.

This bill would extend that immunity to cover the availability for public review of Phase I environmental assessments and information concerning that assessment.

(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, 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.

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 17072.18 is added to the Education Code, to read:

17072.18. The board may provide funding for response costs of the removal of hazardous waste or solid waste, the removal of hazardous substances, or other remedial action in connection with hazardous substances at a schoolsite, in the same manner as provided in Section 17072.13, to a school district that has not applied for, or received, funds from the board for the acquisition of a schoolsite, but which has incurred, or will incur, response costs necessary for the development of the site, before it can undertake construction at the site, in accordance with the requirements of this chapter, and which is otherwise eligible to receive funds under this chapter.

SEC. 2. Section 17210 of the Education Code is amended to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts Phase I environmental assessments shall have a least two years experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air

emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action" and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment. A Phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions and that includes a review of all reasonably available records and data bases regarding current and prior gas or oil wells and naturally occurring hazardous materials located on the site or located where they could potentially effect the site, satisfies the requirements of this article for conducting a Phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a Phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose

to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 3. Section 17210.1 of the Education Code is amended to read:

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area, approved in form by the Department of Toxic Substances Control, prior to the commencement of work on a preliminary endangerment assessment.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 4. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I

environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment and of the fee to be forwarded to the Department of Toxic Substances Control for its review of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment and of sufficient information to allow the Department of Toxic Substances Control to confirm that the environmental assessor signing the assessment meets the qualifications set forth in subdivision (b) of Section 17210. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue

the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit a preliminary draft of the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either return the preliminary draft to the school district with comments and requested modifications or requested further assessment or approve the preliminary endangerment assessment as a final draft preliminary endangerment assessment. If the final draft preliminary endangerment assessment is approved and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the final draft preliminary endangerment assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental

Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the final draft preliminary endangerment assessment is approved, in which case the school district shall, within 60 days of the approval of the final draft of the preliminary endangerment assessment, separately publish a notice of the availability of the final draft for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All comments pertaining to the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration shall be forwarded to the Department of Toxic Substances Control immediately. If the district has complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to initiating the preliminary endangerment assessment, the district shall reconsider the adequacy of its approved environmental impact report or negative declaration in light of the approved final draft of the preliminary endangerment assessment and determine whether a further environmental document is necessary. The district shall hold a public hearing on the final draft preliminary endangerment assessment and its determination on the adequacy of the existing environmental documents at the same time and in the same manner as it would for a draft environmental impact report or draft negative declaration as previously set forth in this section. The Department of Toxic Substances Control shall approve or disapprove the final preliminary endangerment assessment within 30 days of the district's approval action on the environmental document prepared under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall issue notice of its determination accompanied by a statement of the basis of the determination. The school district shall consider whether any changes between the final draft and final preliminary endangerment assessment require any change in its determination pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The school district shall not file its notice of determination under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) until after the Department of Toxic Substances Control has approved the final preliminary endangerment assessment. The public participation process set forth in this section shall be used by the school district and the Department of Toxic Substances Control instead of procedures set forth in Sections 25358.7 and 25358.7.1 of the Health and Safety Code with

respect to preliminary endangerment assessments. If further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project, the district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions.

(7) If the Department of Toxic Substances Control disapproves the final draft preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(8) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(10) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

SEC. 5. Section 17213.2 of the Education Code is amended to read:

17213.2. As a condition of receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all of the following apply:

(a) If a preliminary endangerment assessment prepared pursuant to Section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, the school district shall enter into an agreement with the Department of Toxic Substances Control to oversee response action at the site and shall take response action pursuant to the requirements of the state act as may be required by the Department of Toxic Substances Control.

(b) Notwithstanding subdivision (a), a school district need not take action in response to a release of hazardous material to groundwater underlying the schoolsite if the release occurred at a site other than the schoolsite and if the following conditions apply:

(1) The school district did not cause or contribute to the release of a hazardous material to the groundwater.

(2) Upon the request of the Department of Toxic Substances Control or its authorized representative the school district provides the Department of Toxic Substances Control or its authorized representative with access to the schoolsite.

(3) The school district does not interfere with the response action activities.

(c) If at anytime during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, the school district shall notify the State Department of Education.

(d) A school district that is required by the Department of Toxic Substances Control to take response action at a proposed schoolsite is subject to both of the following prohibitions:

(1) The school district may not begin construction of a school building until the Department of Toxic Substances Control determines all of the following:

EDUCATION CODE SECTION 17213.1

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

- (A) A further investigation of the site is not required.
- (B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:
 - (i) If a release of hazardous material has occurred and, if so, the extent of the release.
 - (ii) If there is the threat of a release of hazardous materials.
 - (iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment and of the fee to be forwarded to the Department of Toxic Substances Control for its review of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment and of sufficient information to allow the Department of Toxic Substances Control to confirm that the environmental assessor signing the assessment meets the qualifications set forth in subdivision (b) of Section 17210. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and

shall notify the State Department of Education and the governing board of the school district of the approval.

- (3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.
- (4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:
 - (A) A further investigation of the site is not required.
 - (B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.
- (5) The school district shall submit a preliminary draft of the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it

specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

- (6) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either return the preliminary draft to the school district with comments and requested modifications or requested further assessment or approve the preliminary endangerment assessment as a final draft preliminary endangerment assessment. If the final draft preliminary endangerment assessment is approved and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the final draft preliminary endangerment assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the final draft preliminary endangerment assessment is approved, in which case the school district shall, within 60 days of the approval of the final draft of the preliminary endangerment assessment, separately publish a notice of the availability of the final draft for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All comments pertaining to the final draft preliminary endangerment assessment and the draft environmental impact report or negative declaration shall be forwarded to the Department of Toxic Substances Control immediately. If the district has complied with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to initiating the preliminary endangerment assessment, the district shall reconsider the adequacy of its approved environmental impact report or negative declaration in light of the approved final draft of the preliminary endangerment assessment and determine whether a further environmental document is necessary. The district shall hold a public hearing on the final draft preliminary endangerment assessment and its determination on the adequacy of the existing environmental documents at the same time and in the same manner as it would for a draft environmental impact report or draft negative declaration as previously set forth in this section. The Department of Toxic Substances Control shall approve or disapprove the final preliminary endangerment assessment within 30 days of the district's approval action on the environmental document prepared under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall issue notice of its determination accompanied by a statement of the basis of the determination. The school district shall consider whether any changes between the final draft and final preliminary endangerment assessment require any change in its determination pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). The school district

shall not file its notice of determination under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) until after the Department of Toxic Substances Control has approved the final preliminary endangerment assessment. The public participation process set forth in this section shall be used by the school district and the Department of Toxic Substances Control instead of procedures set forth in Sections 25358.7 and 25358.7.1 of the Health and Safety Code with respect to preliminary endangerment assessments. If further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project, the district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions.

- (7) If the Department of Toxic Substances Control disapproves the final draft preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.
- (8) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.
- (9) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:
 - (A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.
 - (B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.
 - (C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.
 - (D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

- (10) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.
- (b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.
- (c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

EDUCATION CODE SECTION 17215.5

17215.5. (a) Prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:

- (1) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.
 - (2) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
 - (3) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite.
- (b) Subdivision (a) shall not apply to any schoolsite approved by the State Department of Education prior to January 1, 1997.

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706



January 26, 1999

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

JAN 28 1999

STATE MANDATES

Dear Ms. Higashi:

As stated in our letter of January 13, 1999, the Department of Finance has reviewed the test claim submitted by the Brentwood Union School District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 509, Statutes of 1996, (AB 1724, McPherson), are reimbursable state mandated costs (Claim No. CSM 98-TC-04 "Acquisition of Agricultural Land for a School Site"). Commencing with page 12 of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- 1. Develop and adopt policies and procedures in accordance with Education Code §39006 for the acquisition of real property for a school site.**

Development of policies and procedures in accordance with the Education Code §39006 appears to be a state reimbursable mandate, and there could be small, one-time costs associated with creating policies and procedures associated with the new code. However, we believe those costs would be minimal, since a school district would likely incorporate these new procedures into the existing school site property procedures.

- 2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.**

Training school district personnel regarding the requirements of acquiring real property designated as agricultural land appears to be a state reimbursable mandate. However, we believe these costs would be minimal, since the training could be incorporated into existing school site acquisition training.

- 3. Evaluate the property based upon all factors affecting the public interest, not limited to selection on the basis of the cost of the land.**

This task is already required in current law (Education Code §17212). Therefore, this activity does not constitute a reimbursable state mandate.

4. Prior to the commencement of purchasing property for any school site:

- a. Research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use.
- b. Research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.

Education Code §17212 requires any potential school site or sites to be "investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest..." which would include researching city or county zoning requirements to determine whether a parcel of land is zoned for agricultural use or production. Therefore, this activity does not constitute a reimbursable state mandate.

5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:

- a. Notify the city, county, or city and county within which the prospective school site is located.
- b. Consult with the city, county, or city and county within which the prospective school site is located.

Education Code §17213(b) requires a governing board of a school district to "consult with the administering agency in which the proposed schoolsite is located...". Since the definition of administering agency could include a city or county, and since consultation could also serve as notification, this requirement appears to already exist in current law. Therefore, this activity does not constitute a reimbursable state mandate.

6. Prepare a report for the governing board that will allow the governing board to make the following findings:

- a. The school district has notified and consulted with the city and/or county within which the prospective school site is to be located.
- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

Education Code §39006 does not require a governing board to complete a report as the claimant suggests. Therefore, this activity does not constitute a reimbursable state mandate.

7. Conduct a meeting of the governing board to make findings required by Education code §39006.

Education Code §39006 does not require a governing board to conduct a specific meeting relative to this issue; it only requires a governing board to make findings. Therefore, this activity does not constitute a reimbursable state mandate.

8. Prepare and draft a board resolution which contains the following findings:

- a. **The school district has notified and consulted with the city and/or county within which the prospective school site is to be located.**
- b. **The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.**
- c. **The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.**

Education Code §39006 does not mandate the creation of a draft board resolution. Therefore, this activity does not constitute a reimbursable 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 September 3, 1998 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 Kimberly Bushard, Principal Program Budget Analyst at (916) 445-0328 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Kathryn Radtkey-Gaither
Program Budget Manager

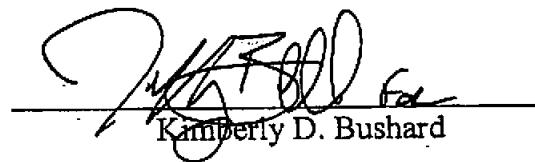
Attachments

DECLARATION OF KIMBERLY D. BUSHARD
DEPARTMENT OF FINANCE
CLAIM NO. CSM 98-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 Education Code §39006 is accurately quoted in the test claim submitted by claimants and, therefore, we do not restate it in this declaration.
3. Attachment B is a true copy of Finance's analysis of AB 1724 prior to its enactment as Chapter 509, Statutes of 1996.

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.

January 26, 1999 at Sacramento, CA



Kimberly D. Bushard

PROOF OF SERVICE

Test Claim Name: Acquisition of Agriculture Land for School Site
Test Claim Number: CSM 98-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 January 26, 1999, 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
1300 I Street, Suite 950
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

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates

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

E-8

Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District
Attention: James Cunningham
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

E-8

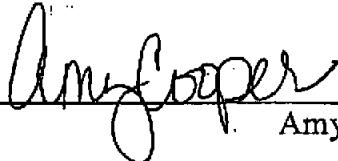
State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Brentwood Union School District
Mr. Paul C. Minney, Esq.
Girard & Vinson
1676 North California Blvd., Ste. 450
Walnut Creek, CA 94596

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 January 26, 1998, at Sacramento, California.



Amy Cooper



DEPARTMENT OF
FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3705 ■ WWW.DOF.CA.GOV

December 5, 2001

RECEIVED

DEC 11 2001

COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the test claim for Claim Number CSM 01-TC-03, Acquisition of Agricultural Land for a School Site. As a result of our review, we find that the Commission on State Mandates test claim does not appear to be entirely accurate in identifying potential reimbursable state-mandated programs upon local entities contained within Chapter 509, Statutes of 1996, Chapter 1002, Statutes of 1999, and Chapters 135 and 443, Statutes of 2000.

Commencing with page 15 of the test claim, the following activities, along with our conclusions, have been identified as reimbursable state-mandated activities imposed upon school districts:

1. Develop and adopt policies and procedures in accordance with Education Code Section §17215.5 for the acquisition of real property for a school site.

Development of policies and procedures in accordance with the Education Code §17215.5 appear to be a state reimbursable mandate, and there could be some one-time costs associated with creating policies and procedures associated with the new code. However, we believe those costs would be minimal, since a school district would likely incorporate these new procedures into the existing school site property procedures.

2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.

Training school district personnel regarding the requirements of acquiring real property designated as agricultural land appears to be a state reimbursable mandate. However, we believe these costs would be minimal, since the training could be incorporated into existing school site acquisition training.

3. Before acquiring a school site, contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site, or if the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, contract with an

environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter in an agreement with the Department of Toxic Substances to oversee the preparation of the preliminary endangerment assessment.

These requirements under Education Code §17213.1 only apply to participants in the School Facility Program (Chapter 12.5 of the Education Code), which is an optional program: school districts involved in the construction of school facilities may choose whether or not they participate in this state matching fund program. Currently approximately 439 of 1054 school districts in California (42 percent) have received funding pursuant to the State School Facility Program authorized by this chapter. Finance notes that the first sentence in Education Code §17213.1 specifically states in part:

"As a condition of receiving funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall..."

Since the very premise of the requirement is that districts comply with this section as a condition of receipt of funds in this optional school facilities program, these activities do not constitute reimbursable state mandates.

4. Prepare a report for the governing board that will allow the governing board to make the following findings:

- a. The school district has notified and consulted with the city and/or county within which the prospective school site is to be located.
- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

Education Code §17215.5 does not specifically require a governing board to complete a report as the claimant suggests. However, given that some level of documentation and reporting would likely be required to allow a governing board to make a finding as prescribed in the statute, we believe this proposed reimbursable activity is reasonable and consistent with the intent of the statute.

5. Conduct a meeting of the governing board to make findings required by Education Code §17215.5.

Education Code §17215.5 does not require a governing board to conduct a specific meeting relative to this issue; it only requires a governing board to make findings. Indeed we believe it would be highly unlikely that a governing board would hold a separate meeting simply to make the findings as prescribed in Education Code § 17215.5, and note that the board could make such findings as part of a regularly scheduled board meeting. Therefore, we do not believe this activity would constitute a reimbursable state mandate.

6. Prepare and draft a board resolution that contains the following findings:

- a. The school district has notified and consulted with the city and/or county within which the prospective school site is to be located.
- b. The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
- c. The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

Education Code §17215.5 does not mandate the creation of a draft board resolution. However, given that some level of documentation and reporting would likely be required to document that a governing board made a finding as prescribed in the statute, we believe this proposed reimbursable activity is reasonable and consistent with the intent of the statute.

7. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

The appropriate period in the State Mandates process for identifying reimbursable activities is the Test Claim phase; the purpose of the Parameters and Guidelines phase is to specify which activities the Commission identified as reimbursable in the Test Claim phase, to identify eligible claimants, to specify the date upon which the identified activities became reimbursable, and to provide guidance on preparing and submitting reimbursable claims.

It is inappropriate to transform the Parameters and Guidelines phase of the State Mandates process into a venue for Claimants to seek reimbursement for activities they failed to identify in their test claims. If an activity is not identified as reimbursable by the Commission during the Test Claim phase, the costs associated with that activity should not be declared reimbursable at some later date.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list 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, Jeff Bell, Principal Program Budget Analyst at (916) 445-0328 or Tom Lutzenberger, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Randal H. Baker
Program Budget Manager

Attachment:

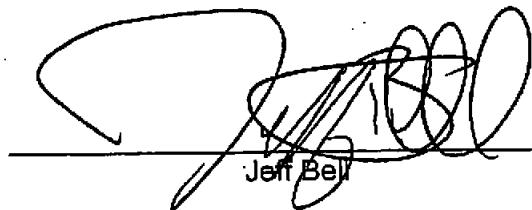
Attachment A

DECLARATION OF JEFF BELL
DEPARTMENT OF FINANCE
CLAIM NO. CSM 01-TC-03

1. I am currently employed by the State of California, Department of Finance (Finance) as a Principal Program Budget Analyst, am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that Chapter 1002, Statutes of 1999, (SB 162), Chapter 135, Statutes of 2000, (AB 2539), and Chapter 443, Statutes of 2000, (AB 2644) and 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.

12/05/01
at Sacramento, CA



A handwritten signature in black ink, appearing to read "Jeff Bell". The signature is fluid and cursive, with a large, stylized initial 'J' and 'B'.

PROOF OF SERVICE

Test Claim Name: Acquisition of Agricultural Land for a School Site
Test Claim Number: CSM 01-TC-03

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 December 5, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Glenn Haas
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

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates

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

E-8

Department of Education
School Fiscal Services
Attention: Gerry Shelton
560 J Street, Suite 150
Sacramento, CA 95814

Mandated Cost Systems, Inc.

Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

B-8

State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

E-8

State Board of Education
Attention: John Mockler
721 Capitol Mall, Room 558
Sacramento, CA 95814

Harmeet Barkschat

Mandate Resource Services
8254 Heath Peak Place
Antelope, CA 95843

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Brentwood Union School District
Attention: Mr. Dennis Wakefield
255 Guthrie Lane
Brentwood, CA 94513

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive
Gold River, CA 95670

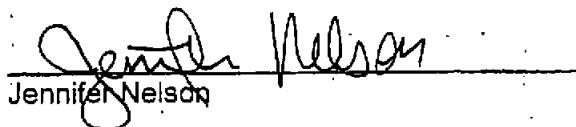
Mr. William A. Doyle
Mandated Cost Administrator
San Jose Unified School District
1153 El Prado Drive
San Jose, CA 95120

DMG-MAXIMUS
Attention: Laurie McVay
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Joseph D. Mullender, Jr.
Attorney at Law
89 Rivo Alto Canal
Long Beach, CA 90803

Loeb & Loeb
Attention: Anthony Murray
1000 Wilshire Boulevard, 18th Floor
Los Angeles, CA 90017

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 December 5, 2001, at Sacramento, California.



Jennifer Nelson

ICC: OROPEZA, BELL, DEL CASTILLO, TAYLOR, LUTZENBERGER, SHIMOMURA,
GEANACOU, FILE

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Brentwood Union School District
Attention: Mr. Dennis Wakefield
255 Guthrie Lane
Brentwood, CA 94513

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive
Gold River, CA 95670

Mr. William A. Doyle
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Jennifer Nelson

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
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July 28, 2004

Ms. Denise Wakefield
Finance and Facilities Analyst
Brentwood Union School District
255 Guthrie Lane
Brentwood, CA 94513

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Draft Staff Analysis and Hearing Date

Acquisition of Agricultural Land for a School Site, 98-TC-04
Brentwood Union School District, Claimant
Education Code sections 17213.1, 17215.5 and 39006
Statutes 1996, chapter 509, Statutes 1999, chapter 1002 and
Statutes 2000, chapter 135 and 443

Dear Ms. Wakefield:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by August 18, 2004. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is tentatively set for hearing on Thursday, September 30, 2004 at 9:30 am in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about September 9, 2004. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

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

Ms. Denise Wakefield

July 28, 2004

Page. 2

If you have any questions on the above, please contact Eric Feller at (916) 323-8221.

Sincerely,



PAULA HIGASHI

Executive Director

Enc. Draft Staff Analysis

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ITEM

**TEST CLAIM
DRAFT STAFF ANALYSIS**

Education Code Sections 17213.1, and 17215.5 (former § 39006)
Statutes 1996, Chapter 509
Statutes 1999, Chapter 1002
Statutes 2000, Chapters 135 and 443

Acquisition of Agricultural Land for a School Site
(98-TC-04, amended by 01-TC-03)

Brentwood Union School District, Claimant

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

STAFF ANALYSIS

Claimant

Brentwood Union School District

Chronology

- 7/22/98 Claimant Brentwood Union School District files original test claim with the Commission on State Mandates (Commission).
- 1/26/99 Department of Finance (DOF) files comments on the test claim.
- 9/18/01 Claimant Brentwood Union School District files amendment to test claim to add Education Code section 17215.5 (formerly section 39006, renumbered by Statutes 2000, chapter 135) and section 17213.1, as added by Statutes 1999, chapter 1002.
- 12/5/01 Department of Finance files comments on amendment to test claim.
- 7/28/04 Commission issues draft staff analysis.

Background

Test claim legislation: The amended test claim includes claims made under two separate sections of the Education Code.

Education Code section 17215.5¹ requires that prior to acquiring property for "a new schoolsite in an area designated ... for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:"

- 1) That the district has "notified and consulted" with the local zoning agency (city and/or county) which has jurisdiction over the proposed school site; and,
- 2) That the final selection has been evaluated "based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land," and,
- 3) That the district will "attempt to minimize any public health and safety issue resulting from the neighboring agricultural uses...."

The California Farm Bureau sponsored the test claim legislation because restrictions imposed on pesticide use on agricultural land bordering schools resulted in a net loss of profitable land from the neighboring parcel. The sponsor argued that school districts locate schools in agricultural areas often, and that the intent of the legislation is not to stop siting schools in these areas, but rather to, "... require dialogue and exchange of

¹ Former Education Code section 39006 enacted by Statutes 1996, chapter 509, was renumbered to section 17215.5 by Statutes 2000, chapter 135, between the original and amended test claim filings.

information between the school district and the city or county when a school is proposed for an agricultural area.”²

Education Code section 17213.1³ requires that if a school district wishes to apply for state funds under the Leroy F. Greene School Facilities Act of 1998, it must perform a number of activities. The Leroy F. Greene School Facilities Act established a new state program in which the State Allocation Board would provide state per pupil funding for new school facilities construction and school facilities modernization. The act included Proposition 1A, passed by voters in November 1998, that authorized the sale of \$9.2 billion in general obligation bonds for K-12 schools (\$6.7 billion) and higher educational facilities (\$2.5 billion.) The proposition also limited, with some exceptions, the fees school districts could levy on developers and homeowners to finance school facilities.⁴ The activities required by section 17213.1 include the following:

- 1) Prior to acquiring the site, the school district must contract with an environmental assessor⁵ (assessor) to supervise the preparation of, and sign, a Phase I environmental assessment⁶ or the school district may choose to forgo a Phase I assessment and proceed directly to a preliminary endangerment assessment.⁷
- 2) If the district chooses to complete a Phase I environmental assessment and the assessment concludes that further investigation of the site is not necessary the district must then submit the assessment to the Department of Toxic Substances Control (DTSC).
 - a) If the DTSC finds the assessment sufficient, it will notify the California Department of Education (CDE) that the assessment has been approved.
 - b) If the DTSC does not find the assessment sufficient, it will instruct the district on what steps need to be taken to complete the assessment.

² Senate Committee on Education, Analysis of Assembly Bill No. 1724 (1995-96 Reg. Sess.) as amended June 12, 1996, page 2.

³ Education Code section 17213.1 was amended by Statutes 2001, chapter 865 and Statutes 2002, chapter 935 subsequent to the amended test claim filing to make public review voluntary under subdivisions (a)(6)(A)-(a)(7).

⁴ Office of the Legislative Analyst, analysis of Proposition 1A, Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, pages 3-4. <http://www.lao.ca.gov/ballot/1998/1A_11_1998.htm> [as of July 19, 2004].

⁵ Defined by Education Code section 17210, subdivision (b).

⁶ Defined by Education Code section 17210, subdivision (g).

⁷ Defined by Education Code section 17210, subdivision (h), as an “activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children’s health, children’s learning ability, public health or the environment.”

- c) The DTSC may also conclude that a preliminary endangerment assessment is required based on the findings of the Phase I environmental assessment.
- 3) If the Phase I environmental assessment concludes that further investigation of the site is necessary or if the district chooses to forgo a Phase I assessment and to move directly to a preliminary endangerment assessment, the district has two options:
 - a) it must either contract with an assessor to supervise the preparation of, and sign, a preliminary endangerment assessment, or,
 - b) it must enter into an agreement with the DTSC to prepare this assessment (including an agreement to compensate DTSC for their costs for this assessment).
- 4) The preliminary endangerment assessment shall conclude EITHER:
 - a) further investigation is not required; or,
 - b) that a release of hazardous materials has occurred or there is a threat of a release of hazardous materials at the site.
- 5) The school district must publish notice that the preliminary endangerment assessment has been submitted and shall make the assessment available for public review according to guidelines provided by subdivision (a)(6).⁸
- 6) The DTSC shall then either find:
 - a) that no further study of the site is required; or,
 - b) that the preliminary endangerment assessment is not satisfactory and further action is necessary; or,
 - c) if a release of hazardous materials has been found to have occurred and the district wishes to go forward with the project the district must:
 - i) prepare a financial analysis of the costs of response action required at the school site; and,
 - ii) assess the benefits of the site; and,
 - iii) obtain approval from the CDE for the site.

Further, section 17213.1⁹, subdivision (11) states that "costs incurred by the district" may be reimbursed in accordance with section 17072.13. Section 17072.13, which is also part of the Leroy F. Greene School Facilities Act of 1998, allows for 50% of costs incurred by the district during the proposal and siting process to be reimbursed under the act. Section 17213.1 was enacted in response to Joint Legislative Audit Committee (JLAC) hearings held in 1992. JLAC concluded that the existing procedures for approval of school site acquisition must be "immediately reconfigure[d]... to ensure local compliance with the laws." Specifically the bill was in response to the actions of the Los Angeles Unified School District, which a legislative committee report alleged requested state approval for

⁸ Since the filing of the amended test claim, Statutes 2001, chapter 865 amended this to make public review voluntary under section 17213.1, subdivisions (a)(6)(A)-(a)(7).

⁹ All statutory references are to the Education Code unless otherwise indicated.

at least nine schools with knowledge that the sites may have contained toxic contamination.¹⁰

School District Facilities: Under current California law, school facilities can be constructed with or without state financial assistance. The School Facility Program (SFP) was created in 1998 under the Leroy F. Greene School Facilities Act¹¹ to administer state funds for school facility construction. The SFP was created to streamline the process for receiving state bond money for public school facilities construction. The program, which involves the State Allocation Board (SAB), Office of Public School Construction (OPSC), the School Facilities Planning Division (SFPD) of the CDE and the Division of the State Architect (SA), allocates funding to local school districts from statewide general obligation bonds passed by the voters of California.

The first funding for the SFP came from Proposition 1A, approved in 1998, which provided \$6.7 billion for K-12 facilities. The second funding came from Proposition 47, which included \$11.4 billion for K-12 facilities. An additional \$12.3 billion was added to this fund with the passage of Proposition 55 in March of 2004.

A school district wishing to receive state funding submits a funding application package to the SFP. The OPSC then reviews the package, and evaluates it under its regulations and policies. Approval of the plans by both the SA and the SFPD are required before the SAB approves the apportionment.¹² The money is then released to the district, which is required to submit expenditure reports to the OPSC, which audits all allocations.¹³

In order to receive the required approval of the CDE, the school district must follow the appropriate guidelines under California Code of Regulations, title 5, division 1, chapter 13, subchapter 1.¹⁴ These regulations include guidelines on site selection,¹⁵ design of education facilities¹⁶ and procedures for plan approval.¹⁷

¹⁰ Conference Report on Senate Bill No. 162 (1999-2000 Reg. Sess.) as amended July 12, 1999, page 4.

¹¹ This statute (Stats. 1998, ch. 407), among others, is the subject of test claim 02-TC-30, *School Facilities Funding Requirements*.

¹² The New Construction Program provides state funds on a 50/50 state and local basis for public school projects while the Modernization Program provides funds on a 60/40 basis.

¹³ See School Facility Program Guidebook, <http://www.documents.dgs.ca.gov/OPSC/PDF-Handbooks/SFP_GdBk.pdf> [as of July 19, 2004]. This document is also part of test claim 02-TC-30, *School Facilities Funding Requirements*.

¹⁴ See School Site Selection and Approval Guide. <<http://www.cde.ca.gov/ls/fa/sf/schoolsitesguide.asp>> [as of July 19, 2004].

¹⁵ California Code of Regulations, title 5, section 14010.

¹⁶ California Code of Regulations, title 5, section 14030.

¹⁷ California Code of Regulations, title 5, sections 14011 and 14012.

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code 17514. In the original claim, claimant alleges that the test claim legislation requires school districts to engage in the following reimbursable state-mandated activities:

1. Develop and adopt policies and procedures in accordance with Education Code section 39006 (now § 17215.5) for the acquisition of real property for a school site.
2. Train school district personnel regarding the requirements of acquiring real property designated as agricultural land.
3. Evaluate the property based on all factors affecting the public interest, not limited to selection based on the cost of the land.
4. Prior to the commencement of purchasing property for any school site:
 - a. research city and/or county general plans to determine if the desired parcel of land is designated in either document for agricultural use; and,
 - b. research city and/or county zoning requirements to determine if the desired parcel of land is zoned for agricultural production.
5. If the land sought to be purchased by the school district is designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production:
 - a. notify the city, county, or city and county within which the prospective school site is located; and,
 - b. consult with the city, county or city and county within which the prospective school site is located.
6. Prepare a report for the governing board that will allow the governing board to make the following findings:
 - a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,
 - b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,
 - c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.
7. Conduct a meeting of the governing board to make the findings required by Education Code section 39006 (now § 17215.5).

8. Prepare and draft a board resolution with the follow findings:

- a. the school district has notified and consulted with the city, county, or city and county within which the prospective school site is to be located; and,
- b. the final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land; and,
- c. the school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.¹⁸

In the amended test claim, claimant states that based on the Department of Finance (DOF) letter filed on January 26, 1999,¹⁹ the claimant now believes that the following activities "were part of prior law and therefore removes them from [the] amended test claim filing:" (3) evaluating the property based on all factors, (4) researching city and/or county zoning requirements and current use and (5) notifying the city and/or county within which the site is located.²⁰ Further claimant amended the test claim to included new alleged state-mandated activities, as follows:

- 1) contract with an environmental assessor to supervise the preparation of and sign a Phase I environmental assessment of the proposed school site unless the governing board decides to proceed directly to a preliminary endangerment assessment (§ 17231.1, subd. (a)); or,
- 2) if the governing board of the school district decides to proceed directly to a preliminary endangerment assessment, the school district shall contract with an environmental assessor to supervise the preparation of and sign a preliminary endangerment assessment of the proposed school site and enter into an agreement with the DTSC to oversee the preparation of the preliminary endangerment assessment (§ 17213.1, subd. (a)(4)).²¹

State Agency Position

In its January 1999 comments on the original test claim (in regards to § 39006, now § 17215.5), DOF states that the alleged state-mandated activities of developing policies and procedures and training staff both appeared to be state-mandated activities of

¹⁸ Original test claim (98-TC-04), pages 13-14.

¹⁹ In a letter dated January 26, 1999 the DOF advised that activities [1] and [2] were reimbursable mandates, that activities [3], [4] and [5] were activities already required by state law and therefore not reimbursable mandates and that activities [6], [7] and [8] where not required by section 17215.5 and therefore also not reimbursable mandates.

²⁰ Amended test claim (01-TC-03), page 7.

²¹ Amended test claim (01-TC-03) page 16. A different numbering scheme is assigned to these activities on pages 9-10 of the amended test claim, but for this analysis the numbering scheme on page 6 will be used.

minimal cost. DOF states that the alleged state-mandated activities of evaluating the site on all factors and determining if the site is zoned for agriculture are already incorporated into state law under Education Code section 17212. And the requirement that the district notifies and consults with a city and/or county is also incorporated into state law under Education Code section 17213, subdivision (b). DOF states that since all three are required activities they are not new programs or higher levels of service. DOF also states that alleged state-mandated activities, preparing a report, holding a meeting, and, passing a resolution, were not required by Education Code section 17215.5. DOF states that section 17215.5 only requires the governing board to make a finding; it does not require staff to prepare a report, conduct a specific meeting or prepare and pass a resolution.²²

In its December 2002 comments on the amended test claim statutes (in regards to both § 17215.5 and § 17213.1), DOF reiterates its prior statements on policy development and training, stating that both appear to be state-mandated activities that impose minimal cost. DOF argues that the newly alleged state-mandated activities, such as contracting for a Phase I environmental assessment, and contracting for a preliminary endangerment assessment are not state-mandated. DOF points out that the entire section 17213.1 begins with "As a condition of receiving funding pursuant to Chapter 12.5..."²³ Therefore, DOF argues that section 17213.1 sets out the requirements for an optional funding source and does not constitute state-mandated activities.

However, DOF reverses its position on the alleged state-mandated activities of preparing a report and a resolution, arguing that although they are not specifically required by the section 17215.5, these activities are "reasonable and consistent with the intent of the statute."²⁴ However, DOF states that in accordance with its previous comments, holding a meeting is not specifically required by section 17215.5 and the board could make the required finding at "a regularly scheduled board meeting."²⁵

Finally, DOF points out that, "[t]he appropriate period in the State Mandates process for identifying reimbursable activities is the Test Claim phase ... [i]t is inappropriate to transform the Parameters and Guidelines phase ... into a venue for Claimants to seek reimbursement for activities they failed to identify in their test claims."²⁶

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁷ recognizes the state constitutional restriction on the powers of local government to tax

²² DOF comments on test claim 98-TC-04, dated January 26, 1999, pages 1-3.

²³ Education Code section 17213.1.

²⁴ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

²⁵ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

²⁶ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 3.

²⁷ Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service that the Legislature may, but need not,

and spend.²⁸ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²⁹ A test claim statute or executive order may impose a reimbursable state program if it orders or commands a local agency or school district to engage in an activity or task.³⁰ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.³¹

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.³² To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirement in effect immediately before the enactment of the test claim legislation.³³ Finally, the newly required activity or increased level of service must impose costs mandated by the state.³⁴

provide such subjection of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders of regulations initially implementing legislation enacted prior to January 1, 1975."

²⁸ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

²⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 727, 735.

³⁰ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsions or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.* at page 754.)

³¹ *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, at page 835.

³² *County of Los Angeles v. State of California* (1981) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 803, at page 835.

³³ *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, at page 835.

³⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 187; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."³⁶

Issue 1; Do the test claim statutes impose a state-mandated activity on school districts within the meaning of article XIII B, section 6?

The California Supreme Court and the courts of appeal have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs "mandated" by a new program or higher level of service imposed upon them by the state.³⁷ Thus, the issue is whether the test claim statutes impose a state-mandated activity on school districts.

Education Code section 17215.5: This section requires the governing board of a school district to make three findings if the board wishes to acquire and build a new school on land zoned for agricultural use. The section states that before acquiring land zoned for agricultural use the governing board of a school district must find:

- 1) That the school district has notified and consulted with the city and/or county within which the site is located; and,
- 2) That the final site selection has been evaluated by the school governing board based on factors other than costs; and,
- 3) That the school district will attempt to minimize any public health issue resulting from neighboring agricultural uses.

Staff finds that this section is not subject to article XIII B, section 6 because the decision to construct a new school as well as the decision on where to site that school is a discretionary decision made by the local governing board of a school district. Section 17215.5 does not require the acquisition of any land for a school, nor does it specify the type of land to be acquired (including land zoned for agricultural use.)

Although California law does express the intent of the legislature that public education shall be a priority in the state and provided by the state,³⁸ there are no statutes or regulations requiring a school district or county board of education to construct school facilities. School districts are given the power by state law to lease³⁹ or purchase⁴⁰ land

³⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³⁶ *City of San Jose v. State of California, supra*, 45 Cal.App.4th at page 1817; *County of Sonoma, supra*, 84 Cal.App.4th at page 1280.

³⁷ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

³⁸ Education Code sections 16001, 16701 and 17001.

³⁹ Education Code section 17244.

for school facilities, to construct school facilities⁴¹ and to establish additional schools in the district.⁴² However, in all of these statutes permissive language is used when describing the role of the governing board of the school district. In sections 17244 and 17245 the board "...is authorized..." and section 17342 states that the, "governing board of any school, whenever in its judgment it is desirable to do so, may establish additional schools in the district."

California courts have also found that the construction of school facilities within a school district is a discretionary decision of the school district. In *People v. Oken*⁴³ the court found that, "[w]here, when or how, if at all, a school district constructs school buildings is a matter within the sole competency of its governing board to determine."⁴⁴ This reasoning was reiterated in a state Attorney General opinion in 1988.⁴⁵

With the conventional construction of school facilities, the question of "where, when or how, if at all, a school district shall construct [a] a school building [] is a matter within the sole competency of its governing board to determine." (*People v. Oken* (1958) 159 Cal.App.2d 456, 460.) The same is essentially true with the construction of a school facility under the Leroy F. Greene State School Building Lease-Purchase Law.⁴⁶

This language indicates that all aspects of new school facilities, including when they are constructed and if they are constructed at all, is a decision left to local school boards.

In recent cases the courts have again held that the power to site a school belongs to the local school district and not the state. In *Town of Atherton v. Superior Court of San Mateo*,⁴⁷ the court found that "[u]nder the statutes ... the state has expressly granted the power of location to its agencies, the school districts."⁴⁸ In *City of Santa Clara v. Santa Clara Unified School District*,⁴⁹ the court found that "the selection of a school site

⁴⁰ Education Code sections 17340 and 35162.

⁴¹ Education Code sections 17245 and 17340.

⁴² Education Code sections 17342.

⁴³ *People v. Oken* (1958) 159 Cal. App. 2d 456.

⁴⁴ *Id.* at page 460.

⁴⁵ Both the California Supreme Court and the Ninth Circuit Court of Appeals have stated that, "Although Attorney General opinions are not binding, they are entitled to great weight." *Freedom Newspapers, Inc. v. Orange County Employees Retirement*, (1993) 6 Cal. 4th 829, 832. *Prescott v. United States*, (1984) 731 F.2d 1388, 1393.

⁴⁶ 71 Opinions Attorney General of California 332 (1988) pages 17-18.

⁴⁷ *Town of Atherton v. Superior Court of San Mateo*, (1958) 159 Cal.App. 2d 417.

⁴⁸ *Id.* at page 428.

⁴⁹ *City of Santa Clara v. Santa Clara Unified School District* (1971) 22 Cal.App. 3d 152.

by a school district involves an exercise of legislative and discretionary action and may not be challenged as to its wisdom, expediency or reasonableness...⁵⁰

Additionally, there are no statutes that direct school districts on the placement of schools. Former Education Code sections 37000 through 37008 did relate to the specific location of schools, but were repealed by Statutes 1989, chapter 1256. Currently, the only section that pertains to state agency involvement in school site selection is section 17521. However, section 17521 only requires that the CDE create standards for use by school districts in the selection of school sites and allows school districts to request advice on the acquisition of a proposed site.

Therefore, based both on statutes and case law, the decision to acquire land on which to site a school and the decision as to which land to acquire are both decisions that are made at the discretion of the school district. If a district's decision is discretionary, no state-mandated costs will be found.

In *City of Merced v. State of California*,⁵¹ the court determined that the city's decision to exercise eminent domain was discretionary. The court found that no state reimbursement was required for loss of goodwill to businesses over which eminent domain was exercised, the court reasoned as follows:

We agree that the Legislature intended for payment of goodwill to be discretionary. The above authorities reveal that whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain.*⁵² [Emphasis added.]

In *Department of Finance v. Commission on State Mandates*⁵³, the California Supreme Court found that costs associated with notices and agendas required by state law were not entitled to reimbursement if the requirements for notice and agendas were part of a program in which the school district had chosen to participate. In that case, the California Supreme Court affirmed the reasoning of the *City of Merced* case as follows:

[T]he core point articulated by the court in *City of Merced* is that activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁵⁴

⁵⁰ *Id.* at page 161, footnote 4.

⁵¹ *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777, 783.

⁵² *Ibid.*

⁵³ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th 727.

⁵⁴ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th 727, 742.

The Supreme Court left undecided whether a reimbursable state mandate "might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program."⁵⁵ There is no evidence in the record, however, that school districts are "practically compelled" to acquire agricultural land to build schools. The test claim statute does not impose a penalty for noncompliance.

The decision of the California Supreme Court interpreting state-mandate issues is relevant to this test claim. The Commission is not free to disregard the clear statement of the California Supreme Court. Thus, pursuant to state law, school districts remain free to site new schools where they choose. The statutory duties imposed by section 17215.5 flow from the decision to site a school on land zoned for agricultural use. Based on the *Department of Finance* case, since this decision is a local discretionary activity, any requirements imposed by the state on the local decision do not constitute a reimbursable state mandate.

Therefore, staff finds that section 17215.5 does not impose a state-mandated activity on school districts within the meaning of article XIII B, section 6.

Education Code section 17213.1: This section, enacted in 1999, lays out the additional requirements⁵⁶ that school districts must satisfy in order to receive funding from the Leroy F. Greene School Facilities Act of 1998.⁵⁷ It requires school districts to contract for a Phase I environmental assessment or if necessary a preliminary endangerment assessment if the school district wishes to request state funding for the facility. These requirements specifically address the study of new school sites for natural, previous or potential releases of hazardous or toxic substances.

When construing a statute, we must ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. At the same time, we do not consider . . .statutory language in isolation. Instead, we examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts. Moreover, we read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.⁵⁸

⁵⁵ *Ibid.*

⁵⁶ Basic requirements for school siting can be found in California Code of Regulations, title 5, sections 14001-14012 and Education Code section 17251.

⁵⁷ Section 17072.13 provides that a school district may request up to 50% of the cost of implementing this section if it chooses to request funding from the State Funding Program (SFP). If a school district qualifies as eligible for financial hardship under section 17075.10 or if the site meets the environmental hardship criteria in section 17072.13, subdivision (c)(1), then up to 100% of this cost can be requested from the SFP.

⁵⁸ *State Farm Mutual Automobile Ins. Co. v.aramendi* (2004) 32 Cal.4th 1029, 1043.

Section 17213.1's first sentence states, "As a condition of receiving state funding...". The plain meaning of this section is that the requirements in section 17213.1 only apply to school districts that decide to request funding through the Leroy F. Greene School Facilities Act of 1998, although the section includes district requirements that apply regardless of where a school is sited. Thus, the district's decision to seek funds under this act is discretionary and not mandatory. DOF alleges that approximately 58% of districts do not apply for funding under the 1998 Leroy Greene Act.⁵⁹

As stated above, if a district's decision is discretionary, no state-mandated costs will be found.⁶⁰

Therefore, the requirements imposed on the conditional funding from the Leroy F. Greene School Facilities Act of 1998 are not state-mandated activities, so section 17213.1 is not a reimbursable mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff finds that the test claim statutes, Education Code sections 17215.5 and 17213.1, do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This conclusion is based on the following findings:

- 1) For Education Code section 17215.5, the specified findings the school district must make if the proposed school site is on land zoned for agricultural use is not state-mandated because the decision to build a school, as well as where to locate it, including the acquisition of agricultural land for a school, is a discretionary decision left to local school districts by state law.
- 2) For Education Code section 17213.1, the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Education Code § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1.

⁵⁹ DOF comments on test claim 01-TC-03, dated December 5, 2001, page 2.

⁶⁰ *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th 727, 742. *City of Merced v. State of California, supra*, 150 Cal. App. 3d 777, 783.

Commission on Statewide Mandates

Original List Date: 9/3/1998
Last Updated: 6/7/2004
List Print Date: 07/20/2004
Claim Number: 98-TC-04
Issue: Acquisition of Argicultural Land for a School Site

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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SENATE COMMITTEE ON EDUCATION
Leroy F. Greene, Chairman
1995-96 Regular Session

BILL NO: AB 1724
AUTHOR: McPherson
AMENDED: June 12, 1996
FISCAL COMM.: Yes HEARING DATE: June
12, 1996
URGENCY: No CONSULTANT: Diane Kirkham

SUMMARY

This bill requires school districts to make specified findings prior to acquiring school sites in agricultural areas after January 1, 1997.

BACKGROUND

Current law provides that a school district, by a two-thirds vote of its governing board, may choose not to comply with local zoning ordinances when locating a new school. However, it must comply with ordinances related to drainage, road improvements, and grading for onsite improvements for school projects.

Current law also requires school districts to evaluate a proposed school site at a public hearing using the site selection standards established by the State Department of Education.

ANALYSIS

This bill requires that school districts make the following findings prior to acquiring a school site in an agricultural area, for any school site approved by the Department of Education after January 1, 1997:

- 1) The school district has notified and consulted with the city or county in which the prospective school site is located.
- 2) The site has been evaluated on factors affecting the public

interest, not just cost.

- 3) The school district will attempt to mitigate any public health and safety issues resulting from neighboring agricultural uses.

STAFF COMMENTS

1) Concerns of Farmers

The sponsor (the California Farm Bureau) argues that farmers effectively lose the use of the portion of their land which is adjacent to a new school due to restrictions imposed on use of agricultural chemicals. They are proposing through this bill that school districts be required to address issues that arise from locating in agricultural areas.

2) How Big is the Problem?

The sponsor asserts that new schools are located in agricultural areas more often than one would think. Representatives of schools indicate that they believe there are relatively few new schools located in these areas. No reliable statewide estimates of the true number of new schools located in agricultural areas are readily available.

- 3) Can a City or County Stop a School Site from Being Located in an Agricultural Area? According to the author's office, the bill is not intended to give the city or county the power to stop the siting of a school in an agricultural area. Rather, it is the intent of the author to require dialogue and exchange of information between the school district and the city or county when a school is proposed for a agricultural area. Under the current wording of the bill, a city or county may have the authority to halt the siting of a school in an agricultural area. Accordingly, staff recommends that the bill be amended to clearly indicate that a city or county would not have the authority to halt such a school site acquisition.

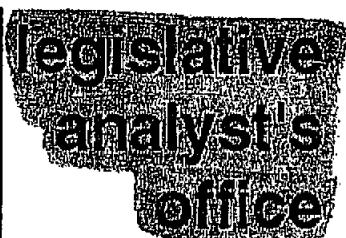
AB 1724
Page 3

SUPPORT

None received

OPPOSITION

None received



November, 1998

**Proposition 1A
Class Size Reduction Kindergarten-University
Public Education Facilities Bond Act of 1998**

Background

Public education in California consists of two distinct systems. One system includes local school districts that provide elementary and secondary (kindergarten through twelfth grade, or K-12) education to about 5.7 million students. The other system (commonly referred to as "higher education") includes local community colleges, the California State Universities, the University of California, and the Hastings College of the Law. The higher education system provides a wide range of education programs beyond the twelfth grade to about 1.9 million students.

K-12 Schools

School Facilities. The state, through the State School Building Lease-Purchase Program, has provided much of the money for school districts to buy land and to construct, reconstruct, or modernize school buildings in the K-12 system. In order to receive money under this program, school districts must meet certain requirements. Districts receive a higher priority for state funding of a project if they provide 50 percent of the project cost with local funds.

Since 1986, the voters have approved \$8.8 billion in state general obligation bonds to fund K-12 school construction and renovation. As of July 1998, there was about \$70 million remaining from these funds.

In addition to obtaining money from the state, local school districts raise funds for school buildings in three main ways:

- **Local General Obligation Bonds.** School districts are authorized to sell bonds to finance school construction projects, with the approval of two-thirds of the voters in the district. In these cases, the bonds are paid off by taxes that are levied on property located within the school district.
- **Special Local Bonds (Known as "Mello-Roos" Bonds).** School districts are authorized to form special districts in order to sell these bonds for school construction projects, with approval of two-thirds of the voters in the special district. (The special districts generally do not encompass the entire school district.) The bonds are paid off by charges assessed to property owners in the special district.

- **Developer Fees.** State law authorizes school districts to impose developer fees on new construction. As of January 1998, the maximum allowable fee under state law is \$1.93 per square foot on residential buildings and 31 cents per square foot on commercial or industrial buildings. These fees may be used only for construction and reconstruction of school buildings. In addition to these fees imposed by school districts, decisions by the courts have allowed cities and counties, when approving new residential and commercial development, to impose additional developer fees for new school construction.

K-12 School Building Needs. There is no district-by-district estimate on the future demand for school facilities. The State Department of Finance estimates that the number of students attending K-12 schools statewide will increase by about 300,000 over the next five years. Given this projected growth, several billions of dollars will be needed statewide for new schools over the next five years. Additional billions of dollars will be needed for reconstruction or modernization of existing schools.

As of July 1998, applications submitted by school districts for state funding of land and new school buildings totaled approximately \$2.9 billion. In addition, applications for state funding to reconstruct or modernize school buildings also totaled \$2.9 billion.

Class Size Reduction. In 1996, the Legislature and the Governor enacted the Class Size Reduction Program, which made funds available to school districts to reduce kindergarten through third grade classes throughout the state to no more than 20 students. Districts implemented this program by purchasing or renting portable classrooms, making use of vacant space in schools, and converting into classrooms space that had been used for other purposes (such as libraries, child care facilities, and teacher lounges).

In 1996 and 1997, the state provided about \$530 million for grants to districts to pay for facilities-related costs associated with reducing class size. A majority of these funds have been used to purchase portable classrooms. It is estimated that the program could result in added facilities costs (including the restoration of space that had been displaced to provide additional classrooms) of between \$500 million and \$700 million.

Higher Education

California's system of public higher education includes 139 campuses serving about 1.9 million students:

- The University of California has nine campuses, with a total enrollment of about 166,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for research.
- The California State University system has 22 campuses, with an enrollment of about 350,000 students. The system grants bachelor and master degrees.
- The California Community Colleges provide instruction to about 1.4 million students at 107 campuses operated by 71 locally governed districts throughout the state. The community colleges grant associate degrees and also offer a variety of vocational skill courses.
- The Hastings College of the Law is governed by its own board of directors and has an enrollment of about 1,300 students.

The state provides money to support these institutions of public higher education. This support

covers both ongoing operating and capital improvement costs. In addition to state funds, these institutions also receive nonstate funds for both operations and capital improvements.

Since 1986, the voters have approved nearly \$3.3 billion in general obligation bonds for capital improvements at public higher education campuses. As of July 1998, there was about \$28 million remaining from these funds. In addition, since 1986 the Governor and the Legislature have provided about \$2.4 billion for public higher education facilities from lease-payment bonds.

Higher Education Building Needs. Each year the institutions of higher education prepare five-year capital outlay plans, in which they identify projects that they believe should be funded over the next five years. The most recent five-year plans identify a total of \$6.5 billion in projects for the period 1998-99 through 2002-03.

Proposal

This measure authorizes the state to sell \$9.2 billion in general obligation bonds for K-12 schools (\$6.7 billion) and higher education facilities (\$2.5 billion).

General obligation bonds are backed by the state, meaning that the state is obligated to pay the principal and interest costs on these bonds. General Fund revenues would be used to pay these costs. These revenues come primarily from state personal and corporate income taxes and sales taxes.

K-12 School Facilities

The \$6.7 billion would be used to fund school construction over the next four years as follows:

- At least \$2.9 billion to buy land and construct new school buildings. Districts would be required to pay for one-half of eligible project costs with local resources.
- At least \$2.1 billion for reconstruction or modernization of existing school buildings. Districts would be required to pay for 20 percent of eligible project costs with local resources.
- Up to \$700 million for facilities costs related to the Class Size Reduction Program.
- Up to \$1 billion for projects where the state determines that a district either (1) is unable for financial reasons to provide sufficient local matching funds or (2) will incur excessive school construction costs that are beyond the control of the district.

The above distribution of funds could be altered with the approval of two-thirds of the Legislature and the Governor.

Developer Fees. The legislation that placed this bond measure on the ballot also makes changes related to developer fees. These changes would take effect only if this bond measure is approved by the voters.

- **School Districts.** Districts would still be authorized to charge \$1.93 per square foot on residential buildings and 31 cents per square foot on commercial or industrial buildings. They could, however, exceed these limits if they meet certain conditions regarding capacity problems and local bonding efforts. In these cases, districts could increase

developer fees to fund the 50 percent matching requirement for new school construction. If there were no state funds available for new school construction, districts could increase developer fees to fund 100 percent of a school project. If a district subsequently receives funds from the state, these funds (up to 50 percent of the project cost) could be reimbursed to the parties that originally paid the fee.

- **Cities and Counties.** In addition, between November 1998 and the primary election of 2006, cities and counties could not require additional fees for school construction as a condition of approving new developments. (Cities and counties could, however, designate land under their jurisdictions for school sites.) At the end of that period, cities and counties could require additional developer fees if any statewide school bond measure is rejected by the voters. They could continue to assess the fees until a subsequent statewide school bond measure was approved by the voters. The amount of fees that cities or counties could assess would be limited to (1) 50 percent of the cost of new school projects if state funds are also available for this purpose or (2) 100 percent of project costs if no state funds are available.

Homebuyer and Renter Assistance. The legislation placing this bond measure on the ballot also provides state funds to offset all or part of the cost of some developer fees. These funds would be available to:

- Homebuyers in areas with high unemployment.
- Buyers of homes costing less than \$110,000.
- Low or very low-income first-time homebuyers.
- Developers of rental housing for very low-income tenants.

A total of \$160 million in state funds would be available for these programs over a four-year period.

Higher Education Facilities

The measure includes \$2.5 billion to construct new buildings, alter existing buildings, and purchase equipment for use in these buildings for California's public higher education system. Of this total, \$165 million would be allocated specifically for (1) new campuses of the University of California and (2) new campuses, campuses with enrollments of less than 5,000 full-time equivalent students, and off-campus centers at the California State University and the California Community Colleges. The Governor and the Legislature would decide the specific projects to be funded by the bond monies.

Fiscal Effect

Bond Costs. For general obligation bonds, the state makes principal and interest payments from the state's General Fund typically over a period of about 25 years. If the \$9.2 billion in bonds authorized by this proposition are sold at an interest rate of 5 percent, the cost over the period would be about \$15.2 billion to pay off both the principal (\$9.2 billion) and interest (\$6 billion). The average payment for principal and interest would be about \$600 million per year.

Homebuyer and Renter Assistance. There would also be a state cost of \$160 million (\$40 million a year for four years) for these programs.

[Return to Initiatives and Propositions](#)

[Return to Legislative Analyst's Office Home Page](#)

SB 162
Page 1

~~PROPOSED CONFERENCE REPORT NO. 1A~~ September 3, 1999

~~SB 162 CFA 1999~~

~~As Amended July 12, 1999~~

Majority vote

SENATE: 23-9 (June 10, 1999) ASSEMBLY: (July 15,
1999) (vote not relevant)

SENATE CONFERENCE VOTE : 2-0
ASSEMBLY CONFERENCE VOTE : 2-0

Ayes:	Firebaugh, Wildman	Ayes:	Escutia, Hayden
-----+	-----+	-----+	-----+

Original Committee Reference: ED.

SUMMARY : Requires a school district that wants certain state bond funding for acquisition of or construction on a schoolsite to conduct an environmental review of the site and applies the state superfund laws to schoolsites with naturally occurring hazardous materials as well as those released on the site. Specifically, the conference committee amendments delete the Assembly amendments to this bill and modify the version that passed out of the Senate by narrowing its focus to the site environmental review process. For school sites seeking Prop 1A funding, the proposed amendments:

- 1) Condition funding eligibility on the governing board of school district (district) hiring an environmental assessor to conduct a Phase I environmental assessment:
 - a) Site sampling or testing is not part of a Phase I assessment;
 - b) Delineates specific credentials for the assessor that include both education and experience;
 - c) Phase 1 assessments may include review of public and private records of current and historical land use, visual surveys of the property and examination of available information about the past and present uses of the vicinity

of the site; and,

- d) The assessment shall focus on the risks posed to children from the released or naturally occurring hazardous materials on the schoolsite.
- 2) Require the Phase 1 assessment to make a specific recommendation either that no preliminary endangerment assessment is necessary or that one is necessary to further determine: a) the extent of a release that has been found to have occurred; b) if there is a threat of a release of hazardous materials; or, c) if there is a naturally occurring hazardous material present.
- 3) Direct the district to send any preliminary assessment that concludes that further investigation is not necessary to the Department of Education (DOE). DOE then sends that material to the Department of Toxic Substances Control (DTSC) within 10 days. DTSC has 30 calendar days to notify DOE and the district that it concurs in or rejects the conclusion that no preliminary endangerment assessment is needed.
- 4) Require the district to elect not to proceed with the site acquisition if either the Phase I assessment or DTSC sees a reason for further study. Else, the district must have a preliminary endangerment assessment (PEA) prepared and the district must enter into an agreement with DTSC to oversee its preparation. This PEA must be made available to the public for 30 calendar days and certified by DTSC.
- a) The PEA must examine site for both hazardous situations caused by a release or those that are naturally occurring. A PEA must include sampling and testing of the site;
 - b) When examining the risk, the PEA shall also have a particular focus on the risk posed to children;
 - c) The district shall not be held liable as a result of making the PEA available for public review; and,
 - d) If DTSC determines no further action is necessary it shall inform the district and DOE within 60 calendar days of receipt of the PEA.
- 5) Require the district, if DTSC determines that there may be a

risk of exposure to children on the site, to conduct the

following studies if it wants to continue to consider the site and seek Prop 1A funding for the project:

- a) Complete a financial analysis estimating cost of any necessary response action;
 - b) Describe benefits of using this site over alternatives;
 - c) Obtain approval from DOE that the site does indeed meet schoolsite selection standards; and,
 - d) Evaluate the suitability of the schoolsite in light of the recommended alternative sites.
- 6) Require the district to reimburse DTSC for its response costs.

7) Specify that Carpenter-Presley-Tanner Hazardous Substances Account Act (state superfund) shall apply to naturally occurring hazardous materials as well as releases for these school site environmental reviews.

AS PASSED BY THE SENATE, this bill included a similar but less detailed environmental review process and also contained provisions regarding steps to be taken in any response action.

The Assembly amendments replaced the Senate version of the bill with intent language to facilitate a vote of non-concurrence that sent the measure and three others to conference committee.

The other three measures: AB 137 (Firebaugh), AB 387 (Wildman) and AB 993 (Hayden) also address the exposure of children to hazardous substances at school.

FISCAL EFFECT : Unknown

COMMENTS : The amendments proposed by the Conference Committee are substantially similar to the version that passed out of the Senate, but the provisions of steps to be taken as a response or remediation action have been removed to eliminate the conflicts with AB 387. AB 387 handles the steps after the environmental review process contained in this bill are completed.

The steps required by this measure need only be done by a district that is seeking Prop 1A funds as part of financing for

□

SB 162
Page 4

acquisition of a school site or construction of a new facility.

The amendments proposed by the conference committee clarify that DTSC must review any Phase 1 assessment or PEA that is produced.

DTSC is also clearly placed in an oversight role pursuant to an agreement that is signed between DTSC and the district. This approach is designed to make sure that there is adequate review of these environmental assessments. The amendments also specify that the credentials of the environmental assessor must include certain educational and practical experience.

The other significant amendment is to apply state superfund provisions to naturally occurring instances of hazardous materials as well as those resulting from a release.

Brief Background: The Joint Legislative Audit Committee (JLAC) conducted hearings in 1998 and concluded that existing practices and procedures were inadequate to assure due diligence in the approval process for school site acquisition and new construction. JLAC recommended in its August 1998 report that "The state must immediately reconfigure its internal approval protocol so that state oversight activities ensure local compliance with the law."

Proponents assert that there are at least nine schools in the Los Angeles Unified School District alone where local agencies suspected serious toxic contamination before state approval and that, even with knowledge that toxins were suspected at these sites, the state still approved acquisition of these sites.

This bill is double joined to AB 387.

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School Facility Program Guidebook

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Contents

Preface	Preface	1
	Introduction	1
	Things to Know	1
	Where to Begin	2
Chapter 1	School Facility Program Overview	3
	Introduction	3
	Implementation and Evolution of the School Facility Program	3
	Funding for the School Facility Program	4
Chapter 2	The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies	5
	State Allocation Board	5
	Office of Public School Construction	6
	Other Agencies Involved	7
Chapter 3	Project Development Activities	9
	Introduction	9
	Establishing Eligibility	9
	Selecting Professional Services	9
	Project Responsibilities	10
	Cost Reduction	10
	Joint-Use Projects	11
	Reusable Plans	11
	Project Financing	11
	Site Selection	12
Chapter 4	Application for Eligibility	13
	Introduction	13
	New Construction Eligibility	13
	Modernization Eligibility	16

Chapter 5

New Construction Funding.....	19
Introduction.....	19
Available New Construction Funding.....	20
Funding Process.....	20
Preparing an Application.....	21
New Construction Grant Amounts.....	23
New Construction Grant.....	23
Supplemental Grants.....	24
District Project Contribution.....	30
SAB Approval Process.....	30
Fund Release.....	30

Chapter 6

Charter School Facilities.....	33
Introduction.....	33
Eligibility.....	33
Application Process	33
Preparing An Application	34
Funding Criteria	34
Preliminary Apportionment Components.....	34
Apportionment Conversion	35
Project Reductions/Increases	36
Fund Release.....	36
Closeout.....	36

Chapter 7

Critically Overcrowded School Facilities	37
Introduction	37
Project Eligibility.....	37
Source Schools.....	37
Preparing An Application	38
Preliminary Apportionment Components.....	38
Apportionment Conversion	39
Project Increases.....	40
SAB Approval Process.....	40
Substantial Progress.....	40
Fund Release.....	40
Closeout.....	40

Chapter 8	Joint-Use Projects.....	41
	Introduction.....	41
	Project Eligibility.....	42
	Funding Process.....	43
	Preparing an Application.....	44
	Joint-Use Grant Amounts.....	44
	Joint-Use Partner Project Contribution.....	47
	Fund Release.....	47
Chapter 9	Modernization Funding.....	49
	Introduction.....	49
	Available Modernization Funding	49
	Funding Process.....	50
	Preparing An Application	50
	Modernization Grant Amounts	52
	Modernization Grant	52
	Supplemental Grants.....	53
	District Project Contribution.....	55
	SAB Approval Process.....	56
	Fund Release.....	56
Chapter 10	Financial Hardship.....	57
	Introduction.....	57
	Qualifying for Financial Hardship Assistance	57
	Financial Hardship Assistance Request	58
	Approval of Financial Hardship Assistance	60
	Renewal of Financial Hardship Assistance	61
Chapter 11	Facility Hardship Grant	63
	Introduction.....	63
	Eligibility for Facility Hardship Grants.....	63
	Application and Approval Process.....	65
	Interim Housing.....	65

Chapter 12	Program Accountability.....	67
	Introduction.....	67
	Progress Report.....	67
	Expenditure Report.....	69
	Expenditure Audit.....	69
Chapter 13	Additional SFP Requirements and Features	73
	Introduction.....	73
	General Information	73
	Project Savings	73
	Restricted Maintenance Account.....	74
Appendix 1	State Agency Contact Information.....	75
Appendix 2	Potential State Agency Involvement.....	77
Appendix 3	School Facility Program Required Forms	79
Appendix 4	Services Matrix.....	81
Appendix 5	Summary of Bond and Deferred Maintenance Allocations	89

Preface

In this preface...

- ▶ Introduction
- ▶ Things to Know
- ▶ Where to Begin

INTRODUCTION

This guidebook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining "grant" funds for the new construction and modernization of schools under the provisions of the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). It is intended to be an overview of the program for use by school districts, parents, architects, the Legislature, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for State funding. This guidebook provides direction on accessing the processes leading to project approvals, insight to the various features of the School Facility Program (SFP), and includes suggestions on how to make the funding system as efficient as possible. However, it is not meant to be a step-by-step discussion of every conceivable application process or project type. For complete project specific information be sure to review the SFP Regulations located on the OPSC Web site at www.opsc.dgs.ca.gov and, most importantly, contact your OPSC project manager. The OPSC project managers are assigned by county, and a complete listing of project manager assignments, including telephone numbers and E-mail addresses, are also included on our Web site.

THINGS TO KNOW

This edition of the guidebook contains additional changes from Assembly Bill (AB) 14 that were not fully implemented before the January 2003 edition and were therefore not included. AB 14 also called for amendments to the Critically Overcrowded School Facilities (COS) program regulations and made advance funding available for costs associated with Department of Toxic Substances Control evaluation and response action at existing school sites (Chapter 5). The amendments to the COS program regulations allow for financial hardship districts to receive advanced funding for the site acquisition and design costs associated with their COS funding application (Chapter 7).

Some program changes in the regulatory process but not yet effective include:

- ▶ Modifying the three year SFP new construction eligibility lock-in for small school districts to allow for protection against a loss of eligibility (AB 16).
- ▶ Postponing the filing period for the Charter School Facilities Program (CSFP) applications to prepare for the changes in Senate Bill (SB) 15.
- ▶ Adjusting the current automatic fire alarm/detection and automatic sprinkler grant allowances to reflect actual costs.
- ▶ Allowing districts to file new construction funding applications up until the date of occupancy.

As this edition of the *School Facility Program Guidebook* is being written, the OPSC and the State Allocation Board Implementation Committee are discussing changes to the CSFP and the Joint-Use Program to allow for more flexibility within the existing programs (SB 15). In addition, the implementation of AB 1008, which allows adjustments for hazardous waste removal costs for new construction projects, is being discussed.

WHERE TO BEGIN

Chapter 1, School Facility Program Overview and Chapter 2, The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies will provide general information. After reviewing these chapters, the reader may want to review Chapter 4, Application for Eligibility, because establishing eligibility is the first step in filing an application for either new construction or modernization funding. The remaining chapters can be reviewed as the topics arise.

Chapter 1

School Facility Program Overview

In this chapter...

- ▶ Introduction
- ▶ Funding for the School Facility Program
- ▶ Implementation of the School Facility Program

INTRODUCTION

The School Facility Program (SFP) began in late 1998 and is a significant change over previous State facilities programs. The State funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and other project specific costs when warranted. This process makes the calculation of the State participation quicker and less complicated. In most cases, the application can be reviewed, the appropriate grants calculated, and SAB approval received in 60–90 days regardless of project size.

In addition to a less complicated application process, the SFP provides greater independence and flexibility to the school district to determine the scope of the new construction or modernization project. There is considerably less project oversight by State agencies than in previous State programs. In return, the program requires the school district to accept more responsibility for the outcome of the project, while allowing the district to receive the rewards of a well managed project. All State grants are considered to be the full and final apportionment by the SAB. Cost overruns, legal disputes, and other unanticipated costs are the responsibility of the district. On the other hand, all savings resulting from the district's efficient management of the project accrue to the district alone. Interest earned on the funds, both State and local, also belongs to the district. Savings and interest may be used by the district for any other capital outlay project in the district. See Chapter 13, Additional SFP Requirements and Features for more information on project savings.

The SFP provides a funding source 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".¹ 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. Districts that are unable to provide some or all of the local match requirement and are able to meet the financial hardship provisions may be eligible for additional State funding (see Chapter 10, Financial Hardship).

IMPLEMENTATION AND EVOLUTION OF THE SCHOOL FACILITY PROGRAM

Senate Bill 50 (Greene) was chaptered into law on August 27, 1998, establishing the SFP. The legislation required that regulations be approved and in place for accepting and processing applications as soon as Proposition 1A was approved by the voters the following November. The SFP continues to evolve through legislative changes. Assembly Bill (AB) 16 and AB 14 provided for significant changes requiring regulations be approved and in place for accepting and processing applications as soon as Proposition 47 was approved by the voters in November 2002. These changes included funding for charter school facilities, critically overcrowded schools, joint-use projects. Some of the changes that impacted new construction funding include the suspension of Priority Points, an additional grant for energy efficiency, and several changes that impact the determination of eligibility. Some of the changes that impacted modernization funding include the change of the funding ratio between the State and the school district from 80 percent State and 20 percent district to 60 percent State and 40 school district, and additional grants for energy efficiency and the modernization of buildings 50 years old or older.

¹Education Code Sections 17072.10 and 17074.10 establishes the new construction grant and modernization grant respectively.

Information on each category of funding can be found in the following chapters:

SFP Component	Chapter	Page
New Construction	5	19
Modernization	9	49
Financial Hardship	10	57

Helpful Hint:

A listing of school districts who have received SFP funding is available on the OPSC Web site at www.opsc.idgs.ca.gov.

FUNDING FOR THE SCHOOL FACILITY PROGRAM

Funding for projects approved in the SFP comes exclusively from statewide general obligation bonds approved by the voters of California. The first funding for the program was from Proposition 1A, approved in November 1998. That bond for \$9.2 billion contained \$6.7 billion for K-12 public school facilities. The second funding for the program is from Proposition 47, approved in November 2002. It is a \$13.2 billion bond, the largest school bond in the history of the State. It contains \$11.4 billion for K-12 public school facilities.

A future bond is currently proposed for March 2004.

Chapter 2

The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies

In this chapter...

- State Allocation Board
- Office of Public School Construction
- Other Agencies Involved

STATE ALLOCATION BOARD

Created in 1947 by the State Legislature, the State Allocation Board (SAB) is responsible for determining the allocation of State resources including 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 State Relocatable Classroom Program, the Deferred Maintenance Program, and many other facilities related programs. Handbooks on these programs may be found on the OPSC Web site at www.opsc.dgs.ca.gov. Printed copies may be obtained by contacting the OPSC directly.

The SAB meets monthly typically at the State Capitol. At each meeting the SAB reviews and approves applications for eligibility and funding, acts on appeals, and adopts policies and regulations as they pertain to the programs that the SAB administers.

Members

The SAB is comprised of ten members:

- The Director of the Department of Finance or designee (Traditional SAB Chair)
- The Director of the Department of General Services or designee
- The Superintendent of Public Instruction or designee
- One person appointed by the Governor
- Three State Senators; appointed by the Senate Rules Committee (two from the majority party and one from the minority party)
- Three State Assembly Members; appointed by the Speaker of the Assembly (two from the majority party and one from the minority party)

The current SAB members are:

- Donna Arduin, Director, Department of Finance
- Dr. William J. Jeffords, Director, Department of General Services
- Jack O'Connell, Superintendent of Public Instruction
- David Sickler, Governor Appointee
- Dede Alpert, Senator
- Bob Margrett, Senator
- Tom Torlakson, Senator
- John Dutra, Assembly Member
- Marco Firebaugh, Assembly Member
- Tony Strickland, Assembly Member

The current SAB officers are:

- ▶ Luisa M. Park, Executive Officer
- ▶ Bruce B. Hancock, Assistant Executive Officer
- ▶ Karen McGagin, Deputy Executive Officer

SAB Implementation Committee

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. The committee membership is comprised of organizations representing the school facilities community which meets approximately once a month depending upon the workload. The SAB Assistant Executive Officer is the chair of the committee. Committee membership as well as the time and location of future meetings can be found on the OPSC Web site at www.opsc.dgs.ca.gov.

OPSC Mission:

"As Staff to the State Allocation Board, the Office of Public School Construction facilitates the processing of school applications and makes funding available to qualifying school districts. These actions enable school districts to build safe and adequate school facilities for their children in an expeditious and cost-effective manner."

Helpful Hint:

The Directory of Services provides information regarding project manager county assignments, including telephone numbers, and other contact information.

OFFICE OF PUBLIC SCHOOL CONSTRUCTION

The OPSC serves the 1,000 plus K-12 public school districts in California. As staff to the SAB, the OPSC is responsible for allocating State funding for eligible new construction and modernization projects to provide safe and adequate facilities for California public school children. The OPSC is also responsible for the management of these funds and the expenditures made with them. It is also incumbent on the OPSC to prepare regulations, policies, and procedures for approval by the SAB that carry out the mandates of the law.

OPSC Responsibilities

The OPSC is charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of eligibility or funding which is being requested and to work with school districts to assist them throughout the application process. The OPSC ensures that funds are allocated properly and in accordance with the law and decisions made by the SAB. Since November of 1988, the OPSC has processed over \$25.8 billion dollars in State apportionments to the SAB. The programs, funding, and approvals over that period are shown in Appendix 5, Summary of Bond and Deferred Maintenance Allocations.

The OPSC prepares agendas for the SAB meetings. These agendas keep the SAB members, districts, staff, and other interested parties apprised of all actions taken by the SAB. The agenda serves as the underlying source document used by the State Controller's Office for the appropriate release of funds. The agenda further provides a historical record of all SAB decisions, and is used by school districts, facilities planners, architects, consultants, and others wishing to track the progress of specific projects, the availability of funds, and SAB regulations.

Management of the Office of Public School Construction

The OPSC is directed by an Executive Officer who is appointed by the Governor. The appointee also serves as the Executive Officer to the SAB. A Deputy Executive Officer is selected by the Executive Officer subject to the approval of the Director of General Services. The Deputy oversees the daily operation of the office. An Assistant Executive Officer is appointed by the SAB. Although not technically a member of the OPSC management, the Assistant Executive Officer works directly with the OPSC management team and acts as liaison between the SAB and the OPSC.

OTHER AGENCIES INVOLVED

School districts planning to construct or modernize existing schools require the assistance of several local, State, and federal agencies. It is essential that those dealing with the school construction process have an understanding of the role each agency plays. The three primary State agencies that will be referred to in this guidebook, in addition to the SAB and the OPSC, are the Division of the State Architect (DSA), the California Department of Education (CDE) School Facilities Planning Division (SFPD), and the Department of Toxic Substances Control (DTSC). District representatives may also come into contact with many other agencies. A listing of some of the agencies that might be involved in a school project and their role is provided in Appendix 2, Potential State Agency Involvement.

The agency information provided in this chapter is meant as a tool for school district representatives to become familiar with the primary State agencies involved in the school construction process. The OPSC encourages district representatives to contact each agency to obtain more information about their procedures and processes. To contact the agencies listed below, please see Appendix 1, State Agency Contact Information.

Department of General Services, Division of the State Architect

The primary role of the DSA in the school construction process is to review plans and specifications to ensure that they comply with California's building codes with an emphasis on structural and seismic safety. The review commences when the school district's architect submits working drawings to the DSA. The DSA reviews the working drawings to assure that the proposed structures meet codes and requirements for structure (seismic), fire and life safety, and universal design compliance.

California Department of Education, School Facilities Planning Division

The role of the SFPD is to review and approve school district sites and construction plans. The SFPD review begins when a school district plans to acquire a new school construction site. Prior to approving a site for school purposes, the SFPD reviews many factors, including, but not limited to, environmental hazards, proximity to airports, freeways, and power transmission lines. The review of construction plans by the SFPD focuses mainly on the educational adequacy of the proposed facility and whether the needs of students and faculty will be met. See Chapter 3, Project Development Activities.

Department of Toxic Substances Control

The role of the DTSC in the school construction process begins with the SFPD's site approval process. The DTSC will assist the district with an assessment of any possible contamination, and, if necessary, with the development and implementation of a mitigation plan.

Department of Industrial Relations

The Department of Industrial Relations (DIR) was established to improve working conditions for California's wage earners, and to advance opportunities for profitable employment in California. The role of DIR in the school construction process is to enforce labor laws relating to contractors and employers.

The Labor Code¹ now requires, prior to receiving a SFP fund release, a district to make a certification that a labor compliance program (LCP), that has been approved by the DIR, for the project apportioned under the SFP has been initiated and enforced if both of the following conditions exist:

- The district has a project which received an apportionment from the funding provided in Proposition 47² or from the potential 2004 State bonds³; and,
- The construction phase of the project commences on or after April 1, 2003, as signified by the date of the Notice to Proceed.

¹ Refer to the Labor Code Section 1771.7

² Kindergarten-University Public Education Facilities Bond Act of 2002

³ Kindergarten-University Public Education Facilities Bond Act of 2004

The DIR provides a guidebook to assist districts in developing a LCP and has model LCP's available for view on its Web site at www.dir.ca.gov. The DIR also provides public works contract information regarding:

- ▶ LCP's and the Labor Code
- ▶ Classification and Scope of Work
- ▶ Prevailing Wage Determination and Special Determination for a Specific Project
- ▶ Verification of the Status of an Individual Apprentice or an Apprenticeship Program

Questions regarding these matters and LCP approval may be directed to DIR at 415.703.4810.

Chapter 3 Project Development Activities

In this chapter...

- ▶ Introduction
- ▶ Establishing Eligibility
- ▶ Selecting Professional Services
- ▶ Project Responsibilities
- ▶ Cost Reduction
- ▶ Joint-Use Projects
- ▶ Reusable Plans
- ▶ Project Financing
- ▶ Site Selection

INTRODUCTION

The School Facility Program (SFP) provides funding to projects that are essentially through the design phase and are ready to begin construction. With the exception of certain advanced planning and site applications for financial or environmental hardship situations, applications for funding require plans approved by the Division of the State Architect (DSA) and by the California Department of Education (CDE). Applications for new construction funding may also require CDE approval of the project site. In most cases, a great deal of time, money, and effort has already been expended before the project ever reaches the Office of Public School Construction (OPSC). Most of the tasks involved in this chapter are not a part of the SFP and are not under the jurisdiction of the State Allocation Board (SAB). However, it is important that the district representative is aware of the options and requirements that may affect the district's project.

ESTABLISHING ELIGIBILITY

One of the first steps a district should consider in the school construction process is establishing eligibility for SFP funding on either a district-wide or high school attendance area basis. This will provide the district with the information needed to determine the possibility and scope of State funding assistance, the types of facilities needed, and the appropriate project site size. See Chapter 4, Application for Eligibility for more information about establishing eligibility.

SELECTING PROFESSIONAL SERVICES

The SFP grants include funding for many professional services related to the development of the school project. Some of the most obvious and commonly used services are provided by architects, civil and structural engineers, and construction managers. Under law, these professional services are different than the services provided by general contractors, painters, site grading subcontractors, and similar construction related work. Unlike construction contracts, professional service contracts are obtained through a qualifications based selection process rather than a competitive bid process.

Because the design professional or other service provider will be engaged long before the application for project funding is submitted to the OPSC, it is critical district representatives are aware that professional services used on projects funded through the SFP must be obtained by a competitive selection process. Failure to do so can jeopardize the project funding.

The Competitive Selection Process

The SFP requires that applicant districts certify that contracts for the services of any architect, structural engineer, or other design professional that were entered into, on or after November 4, 1998 for work on the project were obtained through a competitive process. The term competitive does not mean that the selection has been bid, but rather that a formal qualifications based selection process has occurred that lead to the professional services contract¹.

¹ Chapter 11, commencing with Section 4525 of Division 5 of Title 1 of the Government Code.

Neither the SAB nor the OPSC is qualified to interpret the Government Code requirements pertaining to the selection of professional services. The district is advised to seek legal counsel assistance to ensure that the process used fully complies with this requirement as well as other legal requirements² such as Disabled Veterans Business Enterprise requirements, and the Public Contract Codes.

Eventually, the district will be required to certify that professional design services on the project were selected using a competitive process. This certification is made on the *Application for Funding* (Form SAB 50-04).

Compliance

The competitive selection requirement applies to a new construction or modernization project if:

- ▶ It is funded under the SFP, and
- ▶ professional services of an architect, structural engineer, or other design professional were used to complete the work in the project, and
- ▶ contracts for those services were signed on or after November 4, 1998.

Compliance with this requirement is very important. The law specifically mandates that the SAB shall not apportion funds to a district unless the competitive process for professional services has been used. If, during an audit at the project completion, it is determined that the competitive process was not used, the entire project grant could be found to have been made illegally.

Districts who are unfamiliar with the process of hiring an architect should be aware that the American Institute of Architects (AIA) California Council has sample contracts available to assist districts. For more information, please contact the AIA at 916.448.9082.

PROJECT RESPONSIBILITIES

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the district as owner. Frequently, however, the district may not be aware of the difference between the types of responsibilities, or even of the need to assign responsibilities and tasks related to the project. This lack of clarity may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

As a result of this situation, a small working group was formed by the Joint Committee on School Facilities to address the issue. The Services Matrix is the result of the group's discussions (see Appendix 4, Services Matrix). District representatives may wish to consult the matrix to determine the responsibilities assigned to a project and to avoid duplication of effort.

Helpful Hint:

The SAB publication on cost reduction is available on the OPSC Web site.

COST REDUCTION

The SAB has developed cost reduction guidelines to assist school districts in reducing project construction costs. In April 2000, the SAB made available the *Cost Reduction Guidelines*. The guidelines are a compilation of hundreds of ideas introduced and discussed at a series of statewide meetings. The input into these guidelines comes from various sources, such as school district representatives, State agencies, architects, building industry representatives, construction managers, and consultants. The guidelines provide districts with ideas and new methods to contain and reduce costs and to maximize the return on expenditures. Along with cost reduction guidelines, other incentives within the program, such as the retention of savings, exist to promote efficiency in design and construction of school facility projects. (See Chapter 13, Additional SFP Requirements and Features for more information on project savings.)

² CEQA and Planning per Public Resources Code Section 21151.2.

JOINT-USE PROJECTS

The language in the law which creates the SFP requires that the applicant school district consider the joint use of core facilities. The SAB's *Cost Reduction Guidelines* contains a number of suggestions as to how a district might investigate such joint use possibilities. Grants received under the new construction program may be used to fund school facilities related joint-use projects. Typical joint-use projects include multi-purpose rooms, libraries, gymnasium, or any other type of facility that can be used by both the district and the community.

Proposition 47 provides funding for joint-use projects, specific criteria to access this funding was included in AB16 (Hertzberg) (see Chapter 8, Joint-Use Projects for more information).

REUSABLE PLANS

The SFP requires the SAB to develop recommendations regarding the use of cost-effective, efficient, and reusable facility plans. Many districts have found that reusing some part or all of a school plan previously constructed in the district or in another district can lead to efficiencies in both the time required to prepare construction plans and the cost of constructing the facility. Such plan reuse is not always feasible, and, even when possible, may require considerable redesign work for the new site; however, in many circumstances the advantages can be significant.

To assist districts with exploring the feasibility of plan reuse for their new construction project, the SAB and the OPSC have developed an Internet-based "catalog" of plans that can be searched and browsed by anyone. The link on the OPSC Web site "Prototype School," contains floor plans, renderings, and vital statistics for a number of projects ranging from complete schools to single classrooms and support buildings. Districts are encouraged to download information on any of the projects on the OPSC Web site without charge. Districts may then contact the architects responsible for the original projects to pursue adaptation of the facilities to their individual needs. Arrangements for use of the plans are made by the district with the design professional. Of course, all plans on the OPSC Web site are copyrighted by the designers or firms that submitted them. The SAB and OPSC do not participate in anyway except as a clearinghouse for plans of school facilities.

PROJECT FINANCING

A district has several different options available to meet its 50 percent funding requirement for new construction and 40 percent funding requirement for modernization projects. Some financing mechanisms the district may consider are:

- ▶ General obligation bond funds
- ▶ Mello-Roos
- ▶ Developer fees
- ▶ Proceeds from the sale of surplus property
- ▶ Federal grants

Once a district has received a SFP apportionment and is ready for funds to be released on a project, they will need to certify on the *Fund Release Authorization* (Form SAB 50-05) that their contribution to the project has already been expended, is on deposit, or will be expended prior to the notice of completion for the project. (See Chapter 13, Additional SFP Requirements and Features for more information on the fund release process.)

SITE SELECTION

The SFP provides that in addition to the basic grant for a new construction project, the district may also receive up to 50 percent of the cost of site acquisition (see Chapter 5, New Construction Funding or Chapter 10, Financial Hardship). In most cases, the district must have completed the process of identifying the site and must have approval of the site by the CDE prior to applying for site acquisition funding. Some separate site applications for financial or environmental hardships do not need this approval at the time of application. See further discussion under those topics in Chapter 5, New Construction Funding. The identification and approval process falls under the jurisdiction and responsibility of agencies other than the SAB and the OPSC, and is therefore outside the scope of this guidebook. However, because the processes required can be a major factor in a timely application submittal for project funding, district representatives should be aware of some of the basic requirements for site selection as follows:

Identifying a Site

Selecting a site for a new construction project to be funded under the SFP is primarily a local process. The SAB has guidelines and regulations relating only to the funding limits related to site acquisition³. The CDE is given the authority in law to develop standards for school site acquisition related to the educational merit and the health and safety issues of the site. The CDE uses these standards to review a site and to determine if the site is an appropriate location for a school facility. The CDE approval is a requirement before the application for funding can be submitted to the OPSC and subsequently to the SAB for funding.

Site Approval

There are many components that make up the review and approval of a proposed school site. The CDE publication, *School Site Selection and Approval Guide*, addresses these components more completely than this guidebook can. Therefore, the district representative considering an application for a site under the SFP should consult the CDE or their publications. Contact information can be found in Appendix 1, State Agency Contact Information.

³ SFP Regulations Sections 1859.74 through 1859.76.

Chapter 4 Application for Eligibility

In this chapter...

- ▶ Introduction
- ▶ New Construction Eligibility
- ▶ Modernization Eligibility

INTRODUCTION

The School Facility Program (SFP) provides State funding assistance for two major types of facilities construction projects: new construction and modernization. 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 State Allocation Board (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 the funding for an eligible project, the district representative must file a funding application with the Office of Public School Construction (OPSC) for approval by the SAB. See Chapter 5, New Construction Funding and Chapter 9, Modernization Funding for information on submitting applications for funding.

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 process must be done only once. Thereafter, the district need only update the eligibility information if additional new construction and modernization funding applications are submitted.

After the application for eligibility is reviewed by the OPSC, it is presented to the SAB for approval. The SAB's action establishes that the district has met the criteria set forth in law and regulation to receive State funding assistance for the construction of new facilities or the modernization of existing facilities. Throughout this chapter, references to the district also include a county office of education unless otherwise noted.

The discussions in this chapter are intended to describe the basic processes a district will encounter and use for establishing eligibility. Every possible situation cannot be dealt with in this overview. When preparing an application, the district representative should always contact the OPSC project manager to be sure that the district's approach is correct and will result in the most eligibility possible for State assistance. To learn more about the SFP program, visit the OPSC Web site at www.opsc.dgs.ca.gov.

NEW CONSTRUCTION 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. The baseline is adjusted for changes in enrollment and for facilities added, and may be adjusted for other factors such as errors and omissions or amendments to the Regulations. For a complete list of adjustments, refer to SFP Regulation Section 1859.51. Except for these updates, the establishment of the eligibility baseline is a one-time process.

Establishing Eligibility on a District-Wide or High School Attendance Area

Districts generally establish eligibility for new construction funding on a district-wide basis. For most districts this is the most beneficial method, and the vast majority of applications are filed in this manner. 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.

The district may file using one high school attendance area, or at the district's option, it may combine two or more adjacent HSAs, commonly called a "Super Attendance Area." In either case, the attendance areas must serve an existing, operating high school, and the district must demonstrate that at least one HSAA has negative eligibility at any grade level. Continuation or proposed high schools may not be used for this purpose. Once a district receives funding using a high school attendance area as the basis of its eligibility, it must continue to file future new construction applications on that basis for five years.

Eligibility Process

The SAB has adopted three forms to assist districts in collecting the information needed to establish eligibility. The following outlines the three-step process a district uses to establish new construction eligibility:

Process for Establishing New Construction Eligibility		
Step	Documentation	Purpose
1	Enrollment Certification/Projection (Form SAB 50-01)	Used to collect information about the district's current and historical enrollment and to project that data five years into the future.
2	Existing School Building Capacity (Form SAB 50-02)	Used to record all the teaching stations in the district that are adequate to house students.
3	Eligibility Determination (Form SAB 50-03)	Used to compare the information from the first two forms and to determine if the district is eligible for new construction or modernization grants.

The forms referred to in the table can be downloaded from the OPSC Web site at www.opsc.dgs.ca.gov in a format that allows them to be printed as blank forms or completed on the computer and printed for submission to the OPSC. A replica of the forms can be viewed in Appendix 3, SFP Required Forms. An Excel spreadsheet titled *SAB 50-01, 02, 30 Excel Combined Worksheets* is also available on the OPSC Web site that will perform all the required calculations.

Step One – Enrollment Projections

It may take several years to take a new construction project from the initial determination of need to final completion of construction and occupancy. Because of this, the SFP provides a projection of enrollment five years into the future to determine eligibility for funding. The *Enrollment Certification/Projection* (Form SAB 50-01) is used to make this projection. This form assists the district with determining future needs, planning, arranging State and local funding, and constructing the project before the children to be served arrive. The method of projecting enrollment into the future involves using current and historical California Basic Educational Data System (CBEDS) enrollment data for the district. The data collected is then projected into the future for five years using a method known as a Cohort Survival Projection. A district can obtain CBEDS data from the California Department of Education (CDE).

A district may file on a HSAA basis utilizing one or more HSAA. If the district chooses to file an application on this basis the current and three previous years enrollment data in the HSAA or HSAs (see section on High School Attendance Areas in this chapter) will be needed to be included on the Form SAB 50-01.

Once the district enters the required current and historical enrollment figures, the projection is done automatically on the Excel version of this form. In addition to the five-year projection used in the SFP, the form will also produce a one-year projection for the State Relocatable Classroom Program.

Supplemental Enrollment Figures. A district may supplement the current and historical enrollment figures by the pupils that will occupy dwelling units included in approved subdivision maps or valid tentative subdivision maps for developments to be located in the district or HSAA. The enrollment projection form factors these additional students into the enrollment projection. If the district requests this supplement, the following information must be retained by the district and available for review by the OPSC:

- The approved tentative subdivision maps.
- Approval dates of the maps by the city or county planning commission.
- The number of units to be built in the subdivision.

A yield factor from the various types of housing in the subdivision may be used to supplement the enrollment projection. As an alternative, the district may accept a state-wide average yield factor for calculation purposes. This factor is specified in the instructions on the Form SAB 50-01. Should the district wish to use its own student yield factors, a copy of the district's study that justifies the student yield factors must be submitted with the Form SAB 50-01.

A supplement to the enrollment projection for proposed housing units is not available for county superintendent applications.

Small districts with current enrollment of less than 300 should be aware that they have an option for reporting their enrollment differently if it has decreased by more than 50 percent from the previous year enrollment. (For more information on using this option please refer to the Form SAB 50-01, Part A.)

Step Two – Existing School Building Capacity

The second part in determining the district's eligibility for new construction assistance is to document the capacity of the school district at the time the first application for eligibility is filed under the SFP. This capacity calculation is done only once. Districts may file capacity information on a district-wide basis or using a HSAA.

The Calculation of Capacity. The *Existing School Building Capacity* (Form SAB 50-02) is used to capture the information needed for the calculations, and the accompanying instructions give a detailed guide of how to complete the form. The Form SAB 50-02 is essentially a record of all the district's facilities. The SFP Regulations provide instructions on what spaces are to be included or excluded in the calculation of the district capacity¹. It is important to understand that any project funded with local sources must be counted as existing capacity if the contract for construction of the project is signed before the original application for eligibility determination is made. There is an exception provided for projects if the contracts were signed between August 27, 1998 and November 18, 1998, and if the project did not have eligibility under the Lease-Purchase Program (LPP).

The process of calculating the districts' existing school building capacity is as follows:

1. The district completes a gross inventory of all spaces constructed or reconstructed to serve as an area to provide pupil instruction. The grade level of each classroom is also identified.
2. The gross inventory is adjusted by excluding certain spaces that are not considered available teaching stations under law or regulation. The classrooms remaining in the inventory are multiplied by a loading factor of 25 for elementary, 27 for middle and high school, 13 for non-severe, and 9 for severe classrooms to determine the pupil capacity.
3. A final calculation is done to increase the capacity by a specified amount if the district does not have a substantial number of students enrolled in year round education. High school districts are not subject to this adjustment. The district may request a waiver from this adjustment from the CDE, School Facilities Planning Division.

¹ SFP Regulations, Section 1859.30, "Gross Classroom Inventory".

4. A last adjustment occurs for those districts that receive Multi-Track Year Round Education Operational Grants from the CDE. This increases the district capacity and reduces the final eligibility for the district in a number equivalent to the operational grants the district has most recently received from the CDE.

On-Site Reviews. The district must submit records of the teaching stations existing in the district or HSAA as part of the inventory process. These records generally consist of the following:

- ▶ Diagrams of the facilities at each site in the district. These diagrams need not be highly detailed, but must include all permanent and relocatable classrooms at the site. Many districts use simple "fire-drill" maps for this purpose. The diagrams must be submitted with the application.
- ▶ Documentation supporting any exclusion claimed from the gross inventory. For instance, if the district claims that a portable is excluded because it has been leased for less than five years, a copy of the lease must be in the district's possession as supporting documentation.

Helpful Hint:
All of the OPSC worksheets are available on the OPSC Web site at www.opsc.dgs.ca.gov.

The district may wish to use an OPSC Site Analysis Worksheet to assist with recording all the classrooms in the gross inventory as well as recording the reasons for exclusions, if any. This document is not mandatory but may make the inventory process easier. It also streamlines the OPSC review of the eligibility application.

Step Three – Determining Eligibility

The last part in the new construction eligibility determination process is done on the *Eligibility Determination* (Form SAB 50-03). The existing school building capacity calculated in step two is subtracted from the enrollment projection determined in step one. The number of pupils left, if any, are considered "unhoused" for the purposes of the SPP. They represent the district's eligibility for new construction grant entitlement.

Eligibility Application Approval. Once the district has completed steps one through three, they are ready to submit the eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete prior to adding the application to the workload list. A more detailed review will be completed prior to presentation to the SAB that may include an on-site visit to review the information included in the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

MODERNIZATION 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. For purposes of determining the age of the building, the 20 year and the 25 year period shall begin 12 months after the plans for the building were approved by the Division of State Architect. In either case, the facility 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. If the facility is currently unused, such as a closed school, it may also be eligible for modernization funding if the district intends to reopen it and assign students immediately.

Application Process

The SAB has adopted a single form to calculate modernization eligibility, the Form SAB 50-03. This is the same form used for new construction applications. It may be downloaded from the OPSC Web site in a format that allows it to be printed as a blank form or completed on a computer and printed for submission to the OPSC. A replica of the form can be viewed in Appendix 3, SFP Required Forms.

In order to complete the Form SAB 50-03, the district representative will need a completed site diagram for the applicable school which contains the following information:

- The number of permanent classrooms.
- The number of portable classrooms.
- The ages of all permanent and portable classrooms.
- The grade level of each classroom; i.e., K-6, 7-8, 9-12, non-severe, or severe.
- The square footage for each enclosed facility on the site may be necessary (see below paragraph and the instructions on the Form SAB 50-03 for more information).

The instructions on the Form SAB 50-03 will guide the district through the process of calculating the eligibility at that site for modernization. If all the buildings are over 25/20 years old for permanent/relocatable buildings respectively and eligible for modernization, the grant eligibility is simply the number of children that are or can be housed at a site, whichever is less. However, for cases where there is a mixture of classrooms that are under and over the modernization age limits, two optional calculation methods are provided. One option is to count those facilities that are over the age requirement and the children that can be housed in them. The second option is to develop a ratio based on either the square footage or the number of classrooms by comparing the square footage of overage to underage buildings or the number of overage to underage classrooms on the site. The ratio is then applied to the number of children enrolled at the site. If the district selects the option using a ratio of square footage, it will be necessary to provide the square footage information on the site diagrams as well.

Eligibility Application Approval

Once the district has completed part three of the Form SAB 50-03, they are ready to submit the modernization eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete before adding it to the workload list. A more detailed review will then be completed that may include an on-site visit to review the information included on the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

Helpful Hint:
Did you know that the
OPSC provides the current
workload list on its Web site?

Taken from: <http://www.cde.ca.gov/ls/fa/sf/schoolsitesguide.asp>[Display version](#)

School Site Selection and Approval Guide

Prepared by
School Facilities Planning Division
California Department of Education

Contents

Introduction

Purpose

The Role of the California Department of Education

Selecting the Proper Site

Determining Who Will Select the Site

Developing Site Selection Criteria

- Screening and Ranking Procedures
- Recommended Resources
- Impacted Sites

Evaluating Safety Factors

- Proximity to Airports
- Proximity to High-Voltage Power Transmission Lines
- Presence of Toxic and Hazardous Substances
- Hazardous Air Emissions and Facilities Within a Quarter Mile
- Other Health Hazards
- Proximity to Railroads
- Proximity to Pressurized Gas, Gasoline, or Sewer Pipelines
- Proximity to High-Pressure Water Pipelines, Reservoirs, Water Storage Tanks
- Proximity to Propane Tanks
- Noise
- Proximity to Major Roadways
- Results of Geological Studies and Soils Analyses
- Traffic and School Bus Safety Conditions
- Safe Routes to School
- Safety Studies for Joint-Use Sites

Choosing Appropriate Sites for Joint-Use Facilities

Observing California Environmental Quality Act (CEQA) Requirements

- Lead Agency
- CEQA Documents Needed for Final Department Approval

Recognizing Land-Use Issues

Obtaining Site Approval

Appendices

A. Site Selection Process

- Part 1. Site Selection Criteria
- Part 2. Site Selections Evaluation
- Part 3. Comparative Evaluation of Candidate Sites

B. Evaluation Checklist for School Bus Driveways**C. SFPD 4.0, School Site Field Review****D. SFPD 4.01, School Site Approval Procedures****E. SFPD 4.02, School Site Report****F. SFPD 4.03, School Site Certification****G. Factors to Be Included in a Geological and Environmental Hazards Report****H. References to Codes****I. Walkability Checklist****Introduction**

Selecting the most appropriate site for a school is an important consideration for a school district and the school community. The location, size, and shape of a school site can materially affect the educational program and opportunities for students. Because program needs differ, school districts must carefully develop selection criteria with the requirements of the local school program in mind. The selection must be based not only on current needs but also on projected needs. It is not a simple task. The primary purpose of this guide is to help school districts make the wisest selection possible.

Purpose

This document has been designed to help school districts (1) select school sites that provide both a safe and a supportive environment for the instructional program and the learning process; and (2) gain state approval for the selected sites. To help in the selection process, the guide includes a set of selection criteria that have proven helpful to site selection teams. The guide also contains information about safety factors that should be considered when evaluating potential school sites and about the procedures school districts must follow to gain approval from the Department for new sites and for additions of land areas to existing sites.

The Role of the California Department of Education

Education Code Section 17521 and the *California Code of Regulations (CCR)*, Title 5, sections 14001 through 14012, outline the powers and duties of the Department regarding school sites and the construction of school buildings. Districts seeking state funding must comply with the *Education Code* and Title 5 sections cited above. Site approval from the Department must be granted before the State Allocation Board will apportion funds. Districts using local funds are encouraged to seek the Department's approval for the benefits that such outside, objective reviews provide to the school district and the community.

Selecting the Proper Site

When a school district decides to select a new school site, two basic questions must be addressed: (1) Who will be responsible for the school site selection process? (2) What criteria will be considered in selecting the site? This guide contains information that school districts can use to answer those questions.

Determining Who Will Select the Site

A key decision the school district must make is whether the site will be selected by district staff or through a selection team process. The Department suggests that a selection team recommend a site or sites to the local board of education. For that reason, the information provided in this guide is directed to team members but is equally applicable to district staff. If the school district establishes a site selection team, the team should include community members, teachers, administrators, public officials, and the architect selected by the school district to design the project. The community members should include people with and without children in the district. A consultant from the Department is available to advise the district on the formation of the team. Some school districts include a school board member as part of the team. By following this selection process, the committee may become somewhat large but should produce a better school site as a result. Once the composition of the selection team is determined, one of its first tasks will be to establish site selection criteria.

Developing Site Selection Criteria

School site selection is affected by many factors, including health and safety, location, size, and cost. Those persons responsible for the school site selection will have to evaluate both the present characteristics and the possible future characteristics of a site and its surrounding property. Because the site selection team often is unable to locate a site that meets all the criteria agreed on, it should set priorities and be prepared to make certain compromises. In addition, the team must weigh those site characteristics that may adversely affect the choice. Careful assessment takes time, but the importance of each decision justifies the attention. A public comment period should be incorporated into the process to receive information and support from the broader community for both the primary alternatives and the recommended site or sites.

Screening and Ranking Criteria

To help focus and manage the site selection process, the Department developed screening and ranking procedures. The procedures were created on the basis of the following criteria, which are listed in the general order of importance:

1. Safety
2. Location
3. Environment
4. Soils
5. Topography
6. Size and Shape
7. Accessibility
8. Public Services
9. Utilities
10. Cost
11. Availability
12. Public Acceptance

An explanation of these criteria is in Appendix A, Site Selection Process. Appendix A also contains three work sheets created on the basis of a screening and ranking procedure developed by School Facilities Planning Division (SFPD) staff.

The first work sheet, Site Selection Criteria, outlines the 12 major criteria listed above, with several secondary criteria listed as subtopics. The secondary criteria have been designed to help the selection team define more clearly the factors that must be considered and understand better the types of data needed in the selection and acquisition of the school site. After considering both the primary and secondary criteria, the site selection team should be able to rank the sites in order of acceptability by completing the next two work sheets, Site Selection Evaluation and the Comparative Evaluation of Candidate Sites.

Although the criteria contained in Site Selection Criteria are not the only ones a site selection team should consider, the team might find those criteria useful when explaining to school boards and other interested entities how the selection process was accomplished. School districts purchasing the site with state funds will find the criteria helpful when screening available sites and in identifying at least three acceptable sites. Districts not applying for state funds are not required by *Education Code Section 17251* to review a specific number of sites. However, the California Environmental Quality Act requires that alternative sites be reviewed in the Environmental Impact Report (EIR). Prudence suggests that identifying alternative sites is a desirable procedure, and the Department recommends it.

Recommended Resources

School administrators, members of school boards, site selection teams, and other persons involved in facilities planning may find the following documents useful:

School Site Analysis and Development (2000). Available from the California Department of Education, School Facilities Planning Division, 1430 N Street, Suite 1201, Sacramento, CA 95814.

The Guide for Planning Educational Facilities (1995). Available from the Council of Education Facility Planners International, 9180 E. Desert Cove Drive, Suite 104, Scottsdale, AZ 85260.

School Site Analysis and Development contains information the school site selection team can use to evaluate a potential site and determine whether it meets the needs of the particular school. The site standards in the book are based on historical school facilities funding programs. School planners should modify the requirements to fit current local educational program requirements.

The Department also recommends that the team select a site on the basis of the school district's facility master plan that reflects the district's demographics, potential growth rates, and capacities at existing school sites. In addition, many cities and counties have designated future school sites on general plan land use maps that the team should review.

Impacted Sites

The Department's recommendations for site size can be found in *School Site Analysis and Development*. A ratio of 1:2 between buildings and developed grounds is incorporated in all the tables. Unfortunately, in many cases, primarily in urban settings, sites must be smaller than the acreage that appears in the charts. Although open space on a school campus is desirable for athletic fields, free play, parking, emergency access, foot traffic circulation, supervision, and aesthetics, the district often cannot feasibly acquire enough land. Using eminent domain to condemn property is possible; however, displacing families to gain land for a school is a difficult decision for many school districts to make. In such cases the Department may approve an amount of acreage less than the recommended site size. Policies related to urban impacted areas are being developed. All other site selection procedures outlined in this book should be followed for these sites.

Careful planning on undersized sites must take place to provide the students at that school an appropriate educational program. Educational specifications must be examined carefully to ensure that all aspects of the program can take place within the bounds of a small site. The school district may consider building multilevel complexes with underground parking to maximize the useable acreage on the site. Off-site issues, such as traffic congestion, should also be addressed in the planning process.

Evaluating Safety Factors

Safety is the first consideration in the selection of school sites. Certain health and safety requirements are governed by state regulations and the policies of the Department. In selecting a school site, the selection team should consider the following factors: (1) proximity to airports; (2) proximity to high-voltage power transmission lines; (3) presence of toxic and hazardous substances; (4) hazardous air emissions and facilities within a quarter mile; (5)

other health hazards; (6) proximity to railroads; (7) proximity to high-pressure natural gas lines, gasoline lines, pressurized sewer lines, or high-pressure water pipelines; (8) proximity to propane tanks; (9) noise; (10) proximity to major roadways; (11) results of geological studies and soils analyses; (12) condition of traffic and school bus safety; (13) safe routes to school; and (14) safety issues for joint-use projects.

Proximity to Airports

The responsibilities of the school district, the California Department of Education, and the Department of Transportation (DOT), Aeronautics Program, Office of Airports, concerning the school site's proximity to runways are contained in *Education Code Section 17215* (as amended by Assembly Bill (AB) 747, Chapter 837, Statutes of 1999). (See CCR, Title 5, Section 14011(k).)

As a part of the site selection prescreening process, the school district should determine the proximity of the site to runways. Both the Department and DOT have maps identifying airport locations. If the site is within two nautical miles of an existing airport runway or a potential runway included in an airport master plan, as measured by direct air line from the part of the runway that is nearest to the school site, the following procedures must be followed before the site can be approved:

1. The governing board of the school district, including any district governed by a city board of education, shall give the Department written notice of the proposed acquisition and shall submit any information that is required by the Department. The Department will notify the DOT Aeronautics Program, Office of Airports.
2. The Division of Aeronautics shall investigate the proposed site and, within 30 working days after receipt of the notice, shall submit to the local governing board a written report and its recommendations concerning acquisition of the site. As a part of the investigation, the Aeronautics Program shall give notice to the owner and operator of the airport, who shall be granted the opportunity to comment on the proposed school site.
3. The governing board of the school district shall not acquire title to the property until the report of the DOT Aeronautics Program has been received. If the report favors the acquisition of the property for a school site or an addition to a present school site, the governing board shall hold a public hearing on the matter before acquiring the site.
4. If the report does not favor the acquisition of the property for a school site or an addition to a present school site, the governing board may not acquire title to the property. If the report does not favor acquisition of a proposed site, no state funds or local funds shall be apportioned or expended for the acquisition of that site, construction of any school building on that site, or the expansion of any existing site to include that site.
5. The requirements noted above do not apply to sites acquired before January 1, 1966, or to any additions or extensions to those sites.

Proximity to High-Voltage Power Transmission Lines

Electric power transmission lines maintained by power companies may or may not be hazardous to human health. Research continues on the effects of electromagnetic fields (EMF) on human beings. However, school districts should be cautious about the health and safety aspects relating to overhead transmission lines. School districts should take a conservative approach when reviewing sites situated near easements for power transmission lines.

In consultation with the State Department of Health Services (DHS) and electric power companies, the Department has established the following limits for locating any part of a school site property line near the edge of easements for high-voltage power transmission lines:

1. 100 feet from the edge of an easement for a 50-133kV (kilo volts) line
2. 150 feet from the edge of an easement for a 220-230kV line
3. 350 feet from the edge of an easement for a 500-550kV line

These figures represent kV strengths of transmission lines used by utility companies in January 1993. Utility companies report that strengths for distribution lines are below 50kV.

The Department of Health Services completed a multiyear study of EMFs in schools. Results of the study were published at the end of 2000. The limits noted above for locating school sites near EMF-producing lines may be amended on the basis of the findings of the study.

When evaluating a potential site situated near a power line easement, the site selection team should ask the following questions:

1. Is it necessary for the school district to acquire a site near the easement?
2. Are other options available?
3. Has the school district contacted and discussed with the utility company any plans to (a) increase the voltage of the transmission lines; or (b) build other towers on the easement?
4. Is the line a transmission or distribution line?

Each site will be evaluated according to its own potential hazards by the Department consultant. (See CCR, Title 5, Section 14010(c).)

Presence of Toxic and Hazardous Substances

The presence of potentially toxic or hazardous substances on or in the vicinity of a prospective school site is another concern relating to the safety of students, staff, and the public. Persons responsible for site evaluation should give special consideration to the following hazards:

1. Landfill areas on or adjacent to the site
2. Proximity of the site to current or former dump areas, chemical plants, oil fields, refineries, fuel storage facilities, nuclear generating plants, abandoned farms and dairies, and agricultural areas where pesticides and fertilizer have been heavily used
3. Naturally occurring hazardous materials, such as asbestos, oil, and gas

Education Code sections 17071.13, 17072.13, 17210, 17210.1, 17213.1-3, and 17268 became effective January 1, 2000. Together they established requirements for assessments and approvals regarding toxic and hazardous materials that school districts must follow before receiving final site approval from the Department and funds under the School Facilities Program. (A summary of those requirements is noted below.) The school district may submit materials documenting compliance with the toxic and hazardous substances requirements before submitting the balance of the site approval package documents required by the Department. A local educational agency (LEA) may elect not to pursue a proposed site at any time during the process. Refer to SFPD Advisory 00-01 and SFPD Form 4.01* for further information. (See CCR, Title 5, Section 14011(j).)

A summary of the requirements is as follows:

- Current and historic uses on and near the proposed school site shall be investigated by a qualified consultant who prepares a Phase I Environmental Site Assessment (paper/database, site review, and interview investigation) conducted according to the American Society of Testing and Materials standards (ASTM E-1527-2000).
- If the Phase I review concludes that no further investigation is required, two copies of the Phase I assessment and payment for review by the Department of Toxic Substances Control (DTSC) shall be submitted to the Department. The Department will transmit the payment and the Phase I assessment to DTSC for its review and determination. If DTSC concurs with the Phase I assessment, it will issue a determination letter stating that "no action" is required related to hazardous materials.
- If the Phase I review concludes that further investigation is needed or DTSC requires it, the LEA shall enter into an agreement with DTSC and hire a qualified consultant to complete a Preliminary Endangerment Assessment (PEA) under DTSC oversight.

and review. The PEA includes the sampling of soils and risk assessment to determine whether a release of hazardous material has occurred, there is a threat of release, or a naturally occurring hazardous material poses a significant health risk. The LEA will then submit the PEA to DTSC. If no hazardous materials are identified, or if they do not pose a significant health risk, DTSC will approve the PEA and issue a determination letter stating that "no further action" is required.

- If required by DTSC because of health risks associated with hazardous materials are identified in the approved PEA, the LEA shall prepare and implement a Response Action (cleanup, removal, or remediation of hazardous materials) under DTSC oversight and approval. DTSC will issue a certification letter when the Response Action is completed. When a Response Action is required for a site, the LEA must obtain a Contingent Site Approval from the Department before the acquisition and implementation of the Response Action to ensure that the site meets all other requirements for Department approval.

Hazardous Air Emissions and Facilities Within A Quarter Mile

(See Education Code Section 17213(b) and Public Resources Code Section 21151.8(a)(2).)

The LEA shall consult with the administering agency and the local air pollution control district or air quality management district to identify facilities within a quarter mile of the proposed site that might reasonably be anticipated to emit hazardous air emissions or handle hazardous materials, substances, or wastes and shall provide written notification of those findings.

The LEA shall make the finding either that no such facilities were identified or that they do exist but that the health risks do not or will not constitute an actual or potential endangerment of public health at the site or that corrective measures will be taken that will result in emissions mitigation to levels that will not constitute endangerment. In the final instance the LEA should make an additional finding that emissions will have been mitigated before occupancy of the school.

These written findings, as adopted by the LEA governing board, must be submitted to the Department as a part of the site approval package. Often this information is included in the Phase I site assessment and in the adopted California Environmental Quality Act (CEQA) document. (See CCR, Title 5, Section 14011(l).)

Other Health Hazards

(See Education Code Section 17213(a) and Public Resources Code Section 21151.8(a)(1); see also CCR, Title 5, Section 14011(h).)

The LEA shall include in an environmental impact report or a negative declaration the information needed to determine that the proposed site is not any of the following type:

1. The site of a current or former hazardous waste disposal site or a solid waste disposal site unless, if the site was a former solid waste disposal site, the LEA governing board concludes that the wastes have been removed.
2. A hazardous substance release site identified by the Department of Health Services (now maintained by DTSC)
3. The site of one or more pipelines, situated underground or aboveground, which carry hazardous substances, materials, or wastes; unless the pipeline is used only to supply natural gas to that school or neighborhood

These written determinations, as adopted by the LEA governing board, must be submitted to the Department as a part of the site approval package. Often this information is included in the Phase I site assessment and in the adopted CEQA document.

Other factors to consider are as follows:

- If the proposed land has been designated a border zone property by the Department

- of Toxic Substances Control (DTSC), then a school may not be located on the site without a specific variance in writing by DTSC. Contact DTSC, Site Mitigation, (916) 255-3745. See *Health and Safety Code Section 25220*.
- From a nuisance standpoint the site selection committee should also consider whether a site is located near or downwind from a stockyard, fertilizer plant, soil-processing operation, auto dismantling facility, sewage treatment plant, or other potentially hazardous facility.

Proximity to Railroads

When evaluating a site near railroad tracks, a study should be conducted to answer the following questions (See CCR, Title 5, Section 14010(d)):

1. What is the distance from the track easement to the site?
2. Are the tracks mainline or spur?
3. What kinds of cargo are carried?
4. What is the frequency of rail traffic, and how does the rail traffic schedule relate to the school time schedule?
5. Is the proposed site near a grade, curve; bridge, signal, or other track feature?
6. What is the need for sound and safety barriers?
7. If pedestrians or vehicles must cross the tracks, are there adequate safeguards at the crossing?
8. Are there high-pressure gas lines near the tracks that might rupture in the event of derailment?

While most railroads have detailed instructions for handling hazardous materials, no setback distance between railroad tracks and schools is defined in law. However, the *California Code of Regulations, Title 5, Section 14010(d)*, established the following regulations pertaining to proximity to railroads:

If the proposed site is within 1,500 feet of a railroad track easement, a safety study shall be done by a competent professional trained in assessing cargo manifests, frequency, speed, and schedule of railroad traffic; grade, curves, type and condition of track; need for sound or safety barriers; need for pedestrian and vehicle safeguards at railroad crossing; presence of high pressure gas lines near the tracks that could rupture in the event of a derailment; preparation of an evacuation plan. In addition to the analysis, possible and reasonable mitigation measures must be identified.

The National Transportation Safety Board has called for a uniform standard separation of at least 100 feet between hazardous materials storage and production facilities and mainline railroad tracks. Hazardous materials authorities have evacuated homes within a radius of 1,500 feet to 2,500 feet of railroad accidents when toxic gas and explosives were involved.

Additional Information may be obtained from the following organizations:

1. California Public Utilities Commission (CPUC) ([Web site www.cpuc.ca.gov](http://www.cpuc.ca.gov)) has three regional offices providing railroad information.

Sacramento (Fresno and counties north)
Contact: Robert (Buzz) Webb
(916) 327-3131

San Francisco (bay and coastal counties)
Contact: George Elsmore
(415) 703-2665

Los Angeles (counties south of Fresno)
Contact: Tom Hunt
(213) 576-7089

2. Operation Life Savers, which provides educational materials regarding railroad safety information:

Contact: Eric Jacobsen
(530) 367-3918 (telephone)
(530) 367-3053 (fax)

3. The U.S. Government has statutory authority regarding railroads and works collaboratively with the CPUC.

Federal Railroad Administration
650 Capitol Mall, Room 7007
Sacramento, CA
Contact: Al Settje
(916) 498-6540

4. Refer to Public Utilities Commission General Order No. 161, Rule 4, regarding the ability of local emergency response agencies (fire department or other public agency with responsibility for responding to an emergency) to obtain a list of hazardous materials transported on the rail line in question for the most recent prior twelve-month period. Main line railroads have risk management offices:

Union Pacific (St. Louis)
(800) 892-1283

Burlington Northern Santa Fe (Fort Worth)
(817) 234-2350

Amtrak (Oakland)
(800) 683-4114

Caltrain (San Jose)
(408) 291-5660

Metrolink (Los Angeles)
(909) 593-6973

Emergency Response Plan: There are approximately thirty-three short line railroads, not mainline, around the state. School districts should have information about them (e.g. name of rails, owner, operation, location, and dispatch office). In addition, school districts should identify the mile post crossing nearest the school and keep on file with the school's emergency response plan.

Proximity to Pressurized Gas, Gasoline, or Sewer Pipeline

Education Code Section 17213 prohibits the acquisition of a school site by a school district if the site "contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood." Public Resources Code Section 21151.8 uses the same language with reference to approval of environmental impact reports or negative declarations. (See CCR, Title 5, Section 14010(h).)

Proximity to High-Pressure Water Pipelines, Reservoirs, Water Storage Tanks

Large, buried pipelines are commonly used for delivery of water. The ground surfaces over these buried pipelines are covered with roadways or green belts or remain undeveloped, and the general public is unaware of their existence. Designs of such pipelines include a wide margin of safety for the operating water pressures within the pipe, but a severe earthquake, damage by an adjacent construction activity, or highly corrosive conditions surrounding soils can contribute to leakage or even failure of the pipe. A sudden rupturing of a high-pressure

pipeline can result in the release of a large volume of water at the point of failure and fragments of concrete pipe being hurled throughout the immediate area. Subsequent flooding of the immediate area and along the path of drainage to lower ground levels might occur.

To ensure the protection of students, faculty, and school property if the proposed school site is within 1,500 feet of the easement of an aboveground or underground pipeline that can pose a safety hazard, the school district should obtain the following information from the pipeline owner or operator:

1. The pipeline alignment, size, type of pipe, depth of cover
2. Operating water pressures in pipelines near the proposed school site
3. Estimated volume of water that might be released from the pipeline should a rupture occur on the site
4. Owner's assessment of the structural condition of the pipeline (Periodic reassessment would be appropriate as long as both the pipeline and the school remain operational.)

School districts should determine from topographic maps and in consultation with appropriate local officials the general direction that water released from the pipeline would drain. If site selection must involve such pipelines, districts should seek to (1) avoid or minimize students' use of ground surfaces above or in close proximity to the buried pipeline; (2) locate facilities safely or provide safeguards to preclude flooding in the event of a pipeline failure; and (3) prepare and implement emergency response plans for the safety of students and faculty in the event of pipeline failure and flooding.

Proximity to Propane Tanks

A propane tank explosion is known as a boiling liquid evaporative explosion (BLEVE). The school district should address the safety issues of locating a propane tank on or near a school site by answering the following questions:

1. How many tanks are on the site now and how many might there be in the future?
2. How far away would the tanks be stored from the school boundaries?
3. What is the capacity of the tanks?

Once the answers to these questions are established, the district should contact the following state agencies for assistance in evaluating the school's level of safety in the event of explosions and nonexplosive fires:

- State Fire Marshal, (916) 445-8200; Hazardous Materials Division, (916) 445-8477
- Public Utilities Commission, Natural Gas Safety Branch, (415) 703-1353
- California Department of Industrial Relations, (510) 622-3052
- Local Fire Marshal

Noise

Noise is unwanted or harmful sound; sound that is too loud is distracting or, worse, injurious.

The loudness of sound is measured in decibels. Each decibel level equates to the amount of acoustical energy necessary to produce that level of sound. The decibel scale is exponential. A person's whisper may be measured at 20 decibels. The sound measured at 30 decibels is ten times as loud as the 20 decibel whisper.

The normal range of conversation is between 34 and 66 decibels. Between 70 and 90 decibels, sound is distracting and presents an obstacle to conversation, thinking, or learning. Above 90 decibels, sound can cause permanent hearing loss. The California Department of Transportation considers sound at 50 decibels in the vicinity of schools to be the point at which it will take corrective action for noise generated by freeways. (See Streets and

Highway Code sections 216 and 216.1.)

If the school district is considering a potential school site near a freeway or other source of noise, it should hire an acoustical engineer to determine the level of sound that location is subjected to and to assist in designing the school should that site be chosen. The American Speech-Language-Hearing Association (ASHA) guidelines recommend that in classrooms sounds dissipate in 0.4 seconds or less (and not reverberate) and that background noise not rise above 30 decibels.

Proximity to Major Roadways

The California Code of Regulations, Title 5, Section 14010(e), states: "The site shall not be adjacent to a road or freeway that any site-related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program."

Trucks traveling on public roads - including interstate freeways, state highways, and local roads - often contain the same hazardous materials that railcars on railroads contain. Although the quantities of materials being carried on trucks are smaller for a double trailer or tanker in comparison to a railcar, trucks have a greater incidence of accidents, spills, and explosions than do railcars. Moreover, the protective enclosures of a truck are not as strong as are those of a railcar.

When evaluating a site near a major roadway, a school district needs to ask questions similar to those used in evaluating risk from rail lines:

1. What is the distance from the near edge of the roadway right-of-way to the site?
2. How heavy is the traffic flow?
3. How many trucks carrying freight use the roadway during the time students and staff are present?
4. Is a safety or sound barrier necessary?
5. How will students coming across the highway get to school safely?

The California Highway Patrol (CHP) maintains records of traffic flow, traffic accidents, and roadway accidents involving hazardous materials. The CHP Commercial Vehicles Section (916-445-1865) maintains records on traffic flow and accidents involving hazardous materials. The CHP Safety Net Section (916-375-2838) maintains records on all accidents.

County road departments are also a good source for traffic flow and accident information in the local area. The school district may wish to consult the city or county general plan "Noise Element" to help evaluate school sites near major roadways.

Like railroad setbacks, highway setbacks from schools are not established in law. However, experience and practice indicate that distances of at least 2,500 feet are advisable when explosives are carried and at least 1,500 feet when gasoline, diesel, propane, chlorine, oxygen, pesticides, and other combustible or poisonous gases are transported. In the absence of specific, legally defined setback distances for schools, the Department reviews each case individually.

Results of Geological Studies and Soils Analysis

Education Code sections 17212 and 17212.5 require that a geological study and a soils analyses provide an assessment of the potential for earthquake or other geological hazard damage if the prospective school site is located (1) within the boundaries of any Alquist-Priolo special studies zone; or (2) within an area designated as geologically hazardous in the safety element of the local general plan, as provided in *Government Code* Section 65302(g). Because California is seismically active and new faults are being discovered, Department policy is that all proposed school sites have geological studies and soils analyses completed.

Any geological study must be conducted according to provisions contained in *Education Code* Section 17212.5, which states that "no school building shall be constructed,

reconstructed, or relocated on the trace of a geological fault along which surface rupture can be reasonably expected to occur within the life of the school building." (See CCR, Title 5, Section 14011(g)).

Earthquakes, Liquefaction, and Landslides. Alquist-Priolo Earthquake Fault Zone maps delineate active fault lines and earthquake fault zone boundaries (previously known as Special Study Zones). For further information on these maps, contact the California Department of Conservation (CDC), Division of Mines and Geology (DMG), at (916) 323-9672 or see the Web site at www.consr.ca.gov/cgs. These maps are important because the *California Code of Regulations, Title 5, Section 14010(f)*, specifies that new school sites may not contain an active earthquake fault or fault trace.

School districts may also wish to refer to Seismic Hazard Zone maps, also prepared by CDC, which address the hazards of liquefaction and earthquake induced landslides. For further information, contact DMG at (916) 323-8569 or www.consr.ca.gov/cgs. These maps are important because the *California Code of Regulations, Title 5, Section 14010(l)*, requires that new school sites not be subject to moderate-to-high liquefaction or landslides.

Copies of either of these types of hazard maps for specific communities may be purchased from BPS Reprographic Services, 149 Second Street, San Francisco, CA 94105; (415) 512-6550.

The *California Building Code* contains descriptions of areas in the state that are divided into seismic zones III or IV. These zone designations will affect the structural safety design requirements of the Division of the State Architect. Eventually, these zone designations may be affected if a new code is adopted.

Areas Subject to Flooding and Inundation. The *California Code of Regulations* (CCR), Title 5, Section 14010(g), requires that new school sites are not to be within an area of flood or dam inundation unless the cost of mitigating the impact is reasonable. The overflowing or failure of nearby rivers, streams, dams, levees, detention/retention basins, flood control channels, water supply aqueducts, irrigation canals, and areas subject to flash flooding and surface runoff is cause for concern. Potential damage may be mitigated by elevating the site above flood levels, creating or improving the levees and drainage infrastructure, and establishing emergency notification and evacuation procedures. As a condition of final site approval, the Department consultant may require a hydrologic study or other means of confirmation that the site will not be subject to flooding or a report of proposed mitigation measures, including estimated costs, or both.

The district should consult the local city or county general plan, responsible flood control agencies, and Flood Insurance Rate Maps (FIRM), which are available from the Federal Emergency Management Agency (FEMA). These official maps delineate flood hazard areas, such as the 100-year flood plain. Copies of flood maps are available for a nominal fee. Contact the following agency for a copy of the current flood map for a specific community: Map Service Center (MSC), P.O. Box 1038, Jessup, MD 20794-1038; (800) 358-9616; Web site www.fema.gov/nfip/readmap.htm.

The Governor's Office of Emergency Services (OES) publishes maps that provide the best estimate of where water would flow if dams were to experience failure. Contact OES at www.oes.ca.gov for further information.

See Appendix H for factors to be included in geological hazard reports.

Traffic and School Bus Safety Conditions

The school facility should be situated so that students can enter and depart the buildings and grounds safely. As the number of schools providing child care and extended day classes increases, schools need to ensure the safe flow of buses and other traffic through designated areas of the school grounds. When analyzing potential school sites, the selection team should consider a number of safety factors. The size and shape of the site will affect the traffic flow and the placement of pickup and drop-off points for parents.

When designing pickup and drop-off points, the team should remember that the separation of bus traffic from all other traffic is of paramount importance. Roads servicing the area must be of sufficient paved width when the point at which the bus loads and unloads pupils is off the main thoroughfare. The need for left turn lanes must be determined. Driveway openings must conform to local ordinances or regulations. When analyzing potential school sites for traffic and bus safety, site selection teams should use the evaluation checklist contained in Appendix B. Department consultants can help in evaluating issues of ingress and egress.

Safe Routes to School

The national Walk Our Children to School Day was established in 1997 by the Partnership for a Walkable America, a national alliance of public and private organizations committed to making walking safer. Because the physical environment greatly affects how many residents can and will walk, a Walkability Checklist is provided in Appendix J. It is an excerpt from the National Safety Council's checklist, which can be accessed at www.nsc.org/walkable.htm. A growing number of communities are implementing measures to make their environments safer for walking.

The Department recommends that the site selection committee walk the area surrounding each proposed school site. If there are unsatisfactory walking routes for a proposed site, the school district should consider another site or work with the city or county to have safe walking routes installed before opening the school.

Federal Highway Administration (FHWA) funds may be available to help make school access safer for pedestrians and cyclists. Assembly Bill 1475 (Chapter 663, Statutes of 1999) directs FHWA safety funds to a new program entitled Safe Routes to Schools. This program will sunset January 1, 2005.

The California Department of Transportation (DOT) has the responsibility to distribute the Safe Routes to Schools program guidelines. Additional information may be obtained at the following Internet addresses:

DOT Home Page: www.dot.ca.gov
Local Programs: www.dot.ca.gov/hq/LocalPrograms
Traffic Operations: www.dot.ca.gov/hq/traffops

Safety Studies for Joint-Use Sites

Many school districts plan schools for use in conjunction with park districts, library districts, or other governmental entities. Such cooperative planning is encouraged and may result in recreational and educational areas suitable for use by both students and community members. Special care must be taken to ensure that both the students and the community members can use the site without compromising the safety and security of the school. Particular attention should be given to placing public parking areas and toilets away from classrooms and student play areas.

Choosing Appropriate Sites for Joint-Use Facilities

Frequently, school districts agree to cooperate with a local governmental entity, recreation district, or possibly an adjacent school district when planning a new facility, such as a new library, technology center, performing arts center, swimming pool, gymnasium, multipurpose room, or sports complex. Likewise, a commercial or industrial complex may be jointly planned to include a school.

More efforts at saving dollars and acreage will occur as funding and space become scarce resources. The construction and land costs saved may be significant. In some cases, the costs may increase because of joint use, but the benefits to communities may offset the increased expenses. By providing combined and expanded resources and services within a single facility, the school district fosters enhanced community activities.

Agreements must be crafted between the school districts and other appropriate entities regarding site acquisition, mutually acceptable arrangements for space, staffing,

maintenance, materials acquisition, and other matters related to the administration and operation of the joint-use facility. In some cases the shared community facility is also shared between school sites, such as a middle and a high school. In those cases, careful planning must take place about what can and what cannot be shared. In many school districts, more than one facility is used jointly with the community. The fields, theaters, classrooms, and virtually the entire campus become available for joint use. The school is no longer seen as a separate, stand-alone entity.

Examples of Successful Joint-Use or Strategic Alliance Projects in California

Facility	Location
Community Performing Arts Complex	Elk Grove Unified School District, Sacramento City/County Library
Softball Complex	Clovis Unified School District, City of Clovis
Park and Aquatics Center	Roseville Joint Union High School District, City of Roseville
Field Areas	Woodland Joint Unified School District, City of Woodland
Theater and Gyms	Poway Unified School District, Cities of Poway and San Diego
Gymnasium/Fitness Center	Lodi Unified School District, City of Lodi
Technology Center	San Diego County Office of Education
Medical Magnet School/Hospital	Los Angeles Unified School District and Compton Unified School District, King Drew Medical Magnet High School
High School/Community College Campus	San Diego City Unified School District, San Diego City College
On-site School/Business Entity	Santa Rosa Elementary School District, Hewlett-Packard
Senior Center/District Office	Carlsbad Unified School District, Carlsbad Senior Center
Multipurpose Room, Kitchen, Platform	Pauma Elementary School District, Non-profit Foundation, HUD
Library/Media Center, Eastlake High	Sweetwater Union High School District, City of Chula Vista

When planning the acquisition of a site for a joint-use facility, the school district must consider many issues as follows:

- Safety and security
- Access, day and night year-round, including access by public transportation
- Location, as a prominent landmark that encourages community use
- Appropriate size, including adequate space for buildings, grounds, and convenient, plentiful parking

Observing California Environmental Quality Act (CEQA) Requirements

The California Environmental Quality Act (CEQA) is located in the *Public Resources Code* Section 21000 et seq.; the CEQA guidelines are found in the *California Code of Regulations, Title 14*, Section 15000 et seq. Enacted in 1970, CEQA was primarily intended for use by public agencies in considering the potential environmental implications of their actions when approving projects. The Act establishes a duty for public agencies, including school districts, to analyze, avoid, mitigate, or where feasible, minimize foreseeable environmental damage.

Lead Agency

The lead agency is the single agency responsible for determining the type of environmental analysis CEQA requires and for approving and carrying out the project. The local educational agency (LEA) (i.e., school district or county office of education) is the lead agency under CEQA for school facility construction projects and land acquisition.

One of the requirements for the final site approval by the Department is the LEA's completion of the CEQA process before site acquisition. Although the Department will review adopted CEQA documents as a part of its site approval process, the Department is not responsible for ensuring that the LEA properly followed all CEQA requirements or for challenging LEA decisions under CEQA. In most cases the LEA will be required to produce and adopt a negative declaration or an environmental impact report (EIR) for site acquisitions. This CEQA document will also usually encompass the proposed school construction project.

CEQA Documents Needed for Final Department Approval

As a part of the Department's final site approval process, the LEA must submit a copy of the following documents to the School Facilities Planning Division in its site approval package (see Appendix D, SFPD 4.01*):

- LEA-certified final EIR or adopted negative declaration (including the Initial Study/Environmental Checklist)
- Stamped Notice of Completion (NOC) or comment-period closure letter from the Governor's Office of Planning and Research (OPR), State Clearinghouse (SCH)
- Stamped Notice of Determination (NOD) filed with the County Clerk

The Department recommends that the DTSC review and approval process be completed before completing the CEQA process. However, if a Preliminary Endangerment Assessment is required, the LEA should coordinate with DTSC when completing the CEQA and public participation process.

For further information on CEQA, contact the Governor's Office of Planning and Research, State Clearinghouse, at 1400 Tenth Street, Room 222, Sacramento, CA 95814; mailing address: P.O. Box 3044, Sacramento, CA 95812-3044; telephone: (916) 445-0613; Web site: www.opr.ca.gov/. To view or download CEQA or its guidelines, go to <http://ceres.ca.gov/ceqa/>.

Recognizing Land-Use Issues

Several local, regional, and statewide land-use issues must be considered when evaluating and selecting a school site. Many of these issues are considered a part of the school district's compliance with CEQA.

Cities and counties have the responsibility to adopt local ordinances, policies, plans, and zoning maps regarding allowed and prohibited land uses. General plans may also contain the jurisdiction's preferred approximate location of future school sites. While plan coordination is advisable and notification is required before acquisition, school districts retain the authority to overrule local zoning and general plan land-use designations for schools if specified procedures are followed. (See Government Code sections 53094, 65402(a), and 65403 and Public Resources Code Section 21151.2.)

The California Coastal Commission is a statewide land-use planning agency that a school district may have to consult when selecting school sites. This agency is responsible for planning and regulating development along California's coastal zone, which may extend up to five miles inland. (See Public Resources Code Section 30000 et seq. and California Code of Regulations, Title 14, sections 13001-13666.4.)

State law also encourages public agencies, including school districts, to avoid acquiring land that is designated in the general plan and zoned for agricultural use or sites that fall under

Williamson Act agricultural preserves and contracts. Should agricultural land acquisition be necessary, however, districts will need to follow the procedures described in *Education Code* Section 39006 (repealed in 1996, replaced in 1998) and *Government Code* Section 51290 et seq.).

Obtaining Site Approval

After deciding on a site or sites, the school district site selection team should proceed as follows:

Schedule a site visit with the Department consultant.

If the site is to be purchased with state funds, Department approval is required before state funds can be apportioned. Provide the Department consultant with maps of three approvable sites for review purposes. The consultant will view the sites and provide the district a written evaluation of the site(s) on SFPD Form 4.0, Initial School Site Evaluation (Appendix C). The consultant will indicate which sites are approvable and will rank the sites relative to each other. The consultant will also provide the district three forms required for final approval of the site:

SFPD 4.01, School Site Approval Procedures (Appendix D)

SFPD 4.02, School Site Report (Appendix E)

SFPD 4.03, School Site Certification (Appendix F)

The Department will issue a Final Site Approval Letter (Appendix G) valid for five years.

If the site is to be purchased with funds other than state funds and the school district will not seek state reimbursement at a future date, the district can voluntarily ask the Department to review the site to confirm its suitability as a school site. The district should follow the same procedures outlined above.

Request that the Department arrange an investigation of the site in accordance with *Education Code* Section 17215 (amended in 1999 by Assembly Bill 747) by the Department of Transportation, Aeronautics Program, Office of Airports. If the site is within two nautical miles of an airport runway.

For further information on requirements for purchasing sites with state funds or with funds other than state funds, see *Education Code* sections 17211 and 17251(a) and (b) and *California Code of Regulations, Title 5, Section 14012*. Refer to the section Presence of Toxic and Hazardous Substances, under Evaluating Safety Factors, for what must be done regarding a Phase I Environmental Site Assessment.

Many statutes and regulations other than those of the Department and the State Allocation Board, Office of Public School Construction, apply to the purchase and use of land for a school. School districts should confer with legal counsel or their county office of education superintendent, or both, before acquiring property.

For additional information regarding any changes in issues relating to school site selection, school districts should contact the School Facilities Planning Division (SFPD) at (916) 322-2470 or refer to the SFPD Web site at www.cde.ca.gov/ls/fa/index.asp.

Appendix

Appendix A Site Selection Process

When a school district is planning to acquire a site for a school, it must take various factors into consideration. The School Facilities Planning Division has developed three work sheets

to assist the district in assessing potential sites and making preliminary selections. The work sheets, which are included in this appendix, outline a set of 12 primary criteria governing school site selection and consists of three components: Site Selection Criteria, Site Selection Evaluation, and a Comparative Evaluation of Candidate Sites. These components allow for a comprehensive examination of sites to determine strengths and weaknesses (Site Selection Criteria); a ranking of each site (Site Selection Evaluation); and finally, a comparison of sites by the rating factors and total scoring (Comparative Evaluation of Candidate Sites). The criteria are consistent with the California Education Code, California Code of Regulations, Title 5, California Public Resources Code, and the California Department of Education policies and guidelines.

Although these standards are not the sole criteria to be considered by a school district's site selection committee, the committee may find them useful in evaluating various sites, identifying at least three acceptable sites from which a final choice can be made, and, eventually, explaining the site selection process to interested entities.

Each primary element listed on the Site Selection Criteria work sheet contains secondary measures that provide the committee the opportunity to apply a specific set of guidelines to each potential site and aid in the analysis of a site. The secondary criteria may also be used by the committee to understand better the types of data needed in identifications, selection, and final acquisition of a school site. After considering both primary and secondary standards on the work sheet, the committee should rank the sites in order of acceptability by completing the second and third work sheets.

Part 1. [Site Selection Criteria](#) (PDF; 19.5KB; 3pp.)

Part 2. [Site Selections Evaluation](#) (PDF; 13.8KB; 1p.)

Part 3. [Comparative Evaluation of Candidate Sites](#) (PDF; 11.3KB; 1pp.)

Appendix B

[Evaluation Checklist for School Bus Driveways](#) (PDF; 21.6KB; 1p.)

Appendix C

SFPD 4.0 Initial School Site Evaluation [PDF](#) (71KB; 3pp.) | [DOC](#) (284KB; 3pp.)

Appendix D

SFPD 4.01 School Site Approval Procedures [PDF](#) (39KB; 3pp.) | [DOC](#) (224KB; 3pp.)

Appendix E

SFPD 4.02 School Site Report [PDF](#) (62KB; 4pp.) | [DOC](#) (256KB; 4pp.)

Appendix F

SFPD 4.03 School Site Certification [PDF](#) (41KB; 1p.) | [DOC](#) (216KB; 1p.)

Appendix G

Factors to Be Included in a Geological and Environmental Hazards Report

I. **Site Description**

- A. Location of site identified by street name, lot number(s), or other descriptors that are site specific.
- B. Description of site reconnaissance, including the vegetation (describe type), and previous site usage.

II. **Geological**

A. **Seismic and Fault Hazard**

1. Whether the site is in Alquist-Priolo zone; whether it is situated on or near a pressure ridge, geological fault, or fault trace that may rupture during the life of the school building; and what the student risk factor is.
2. Locations and potential for ground shaking of nearby faults or fault traces. Discussion of field inspection and reconnaissance.

3. Subsurface conditions determined by exploration and literature review.
- B. Liquefaction Subsidence or Expansive Potential**
1. Discussion of subsoil condition relative to ground water and the potential for liquefaction.
 2. Mitigating factors.
- C. Dam or Flood Inundation and Street Flooding**
1. Location of the site in relation to flood zones and dam inundation areas.
 2. If the site is in a flood zone, give year, type, and potential hazard.
 3. Potential for sheet flooding, street flooding, and dam or flood inundation.
- D. Slope Stability**
1. If located on or near a slope.
 2. Discuss potential for instability and landslides.
- E. Mitigations**
1. Discuss mitigations and potential development of the site as it relates to student safety and staff use.
- III. Environmental (Where applicable)**
- A. Health Hazards**
1. Describe the mitigation, if on or near a hazardous or solid waste disposal, to ensure that the wastes have been removed before acquisition.
 2. Discuss soils sample and underground water sample test results and, if toxics are present, the cleanup procedures.
 3. Address the presence of asbestos if serpentine rock is present.
 4. Identify facilities within one-quarter mile of the site that may emit hazardous air emissions. Provide air emissions test results and an analysis of the potential hazard to students and staff (written findings required).
- B. High-Pressure Pipelines and Electric Transmission Lines**
1. Identify proximity to all high-pressure gas lines, fuel transmission lines, pressurized sewer lines, and high-pressure water pipelines within 1,500 feet of the proposed site; and identify supply lines other than gas lines to the site or neighborhood.
 2. Identify all utility easements on or adjacent to the site and the KV capacity of the easement.

Appendix H References to Codes

Code sections may be found on the Web at www.leginfo.ca.gov/calaw.html. Click on the code you want and enter the section number.

Education Code

Education Code references pertaining to site selection can also be found at the School Facilities Planning Division Web site: www.cde.ca.gov/ls/fa/sf/codes.asp.

Code Section	Subject
17072.12	Assistance in site development and acquisition
17072.13	Evaluation of hazardous materials at a site
17210	Definitions in environmental assessment of school sites

17210.1	Application of state act; hazardous materials; risk assessments; compliance with other laws
17211	Public hearing for evaluation before acquisition in accordance with site selection standards
17212	Investigation of prospective school site; inclusion of geological engineering studies
17212.5	Geological and soils engineering studies
17213	Approval of site acquisition; hazardous air emissions; findings (See also <i>Public Resources Code Section 21151.8</i> .)
17213.1	Environmental assessment of proposed school site; preliminary endangerment assessment; costs; liability
17213.2	Hazardous materials present at school site; response action
17213.3	Education Department; monitoring performance of Toxic Substance Control Department; reports on amount of fees and charges
17215	Site near airport; requirements as amended by Assembly Bill 727
17217	Manner of acquisition; school site on property contiguous to district
17251	Power and duties concerning buildings and sites
35275	New school planning and design

and plans are set forth in the *California Code of Regulations, Title 5*.

Public Resources Code

Code Section	Subject
21151.2	School site proposed acquisition or addition; notice to planning commission; investigation; report
21151.4	Construction or alteration of facility within one-quarter mile of school; reasonable anticipation of air emission or handling of hazardous or acutely hazardous material; approval of environmental impact report or negative declaration
21151.8	School site acquisition or construction; approval or environmental impact report or negative declaration; conditions (<i>Note: Public Resources Code Section 21151.8 is similar to Education Code Section 17213. School districts must comply with both.</i>)

Health and Safety Code

Code Section	Subject
25220 - 25240	Land use

Appendix I
Walkability Checklist (PDF; 11.9KB; 2pp.)

Questions: Fred Yeager | fyeager@cde.ca.gov | 916-327-7148

THE PEOPLE, Plaintiff, v. HARRY OKEN et al., Defendants; TONY ALARCON, Appellant; EL MONTE SCHOOL DISTRICT et al., Respondents

Civ. No. 22496

Court of Appeal of California, Second Appellate District, Division Three

159 Cal. App. 2d 456; 324 P.2d 58; 1958 Cal. App. LEXIS 2020

April 17, 1958

SUBSEQUENT HISTORY: [***1]

A Petition for a Rehearing was Denied May 7, 1958, and Appellant's Petition for a Hearing by the Supreme Court was Denied June 11, 1958. Carter, J., was of the Opinion that the Petition Should be Granted.

PRIOR HISTORY: APPEAL from an order of the Superior Court of Los Angeles County striking a third amended cross-complaint. Aubrey N. Irwin, Judge.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant citizen challenged the order of the Superior Court of Los Angeles County (California) striking his third amended cross-complaint against respondents, school and county, in the action by plaintiff, the State of California, against the school, the county, and others to abate a public nuisance.

OVERVIEW: The state filed an action against the school, the county, and others to abate a public nuisance alleged to exist on properties located in the county due to dilapidated buildings on the properties. The citizen filed a cross-complaint against the school and the county that sought a judgment declaring that the public interest and necessity required the school to construct a school building and to acquire a site upon which the school building could be erected. The trial court struck the citizen's third amended cross-complaint against the school and the county. The court affirmed on appeal and held that the third amended cross-complaint wholly failed to state a cause of action and was patently frivolous and a sham. The court reasoned that it knew of no law that authorized a private citizen to maintain such an action and that the construction of school buildings was a matter within the sole competency of a school's governing body. The court concluded that the trial court had jurisdiction by its inherent power to prevent frustration, abuse, or disregard of its processes to strike the citizen's cross-complaint.

OUTCOME: The court affirmed the trial court's order striking the citizen's third amended cross-complaint against the school and the county in the state's action

against the school and county to abate a public nuisance.

CORE TERMS: cross-complaint, school district, causes of action, public interest, cross-defendant, necessity require, person in charge, frivolous, demurrer, sham, set forth, devote, cause of action, order striking, acquire, public use, dwellings, public nuisance, governing board, school building, real property, certain tract, appropriation, acquisition, delegated, stricken, erected, abate, site, right of eminent domain

LexisNexis™ Headnotes

Civil Procedure > Pleading & Practice > Pleadings > Counterclaims & Cross-Claims

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Strike

Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders

[HN1]While an order striking a pleading is not ordinarily appealable, the rule is otherwise where a cross-complaint is directed against cross-defendants not otherwise parties to an action.

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

[HN2]Where, when or how, if at all, a school district shall construct school buildings is a matter within the sole competency of its governing board to determine.

Civil Procedure > Eminent Domain Proceedings

Real & Personal Property Law > Eminent Domain Proceedings

[HN3]A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the property sought to be acquired to one of the public uses provided in Cal. Civ. Proc. Code § 1238, but it must likewise be made to appear that he is authorized to devote the property to the public use in question, or otherwise stated, that he is a person authorized to administer or have "charge of such use."

Education Law > Departments of Education > State Departments of Education > Authority

[HN4]Cal. Const. art. IX, §§ 5-6, declare that the legislature shall provide for a system of common schools, or a public school system. By these sections, the constitution makes the school system a matter of state care and supervision. The term "system" itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide a system of common schools means one system which shall be applicable to all the common schools. This duty to provide for the education of the children of the State of California, so far as the state has, by the adoption of the constitution, undertaken it, cannot be delegated to any agency. It is in a sense exclusively the function of the state that 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. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of the state.

*Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings**Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Strike*

[HN5]There is no statutory provision for striking complaints from the files, as there is in respect to sham or frivolous answers. Cal. Civ. Proc. Code §453. However, courts have inherent power, by summary means, to prevent frustration, abuse, or disregard of their processes. A court is not required to tolerate a purported amended complaint which fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration.

HEADNOTES: CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) Appeal--Decisions Appealable--Orders on Motion to Strike. --While an order striking a pleading is not ordinarily appealable, the rule is otherwise where a cross-complaint is directed against cross-defendants not otherwise parties to the action.

(2) Pleading--Amendment--On Leave of Court. --An attempted incorporation of counts or causes of action in an amended cross-complaint without leave of court is ineffective and may not be treated as a part of the pleading in the case.

(3) Schools--Buildings and Construction. --A private citizen may not maintain an action for a judgment declaring that the public interest and necessity require the construction by a school district of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" described in the pleading; where, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine.

(4) Eminent Domain -- Who May Exercise Right -- Individuals; Pleadings. --A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the property sought to be acquired to one of the public uses provided in Code Civ. Proc., § 1238, but must also make it appear that he is authorized to devote the property to the public use in question or that he is a person authorized to administer or have "charge of such use."

(5) Pleading -- Subject Matter -- Facts Judicially Noticed. -- An allegation by way of conclusion that the pleader "is a person, competent and qualified to acquire the real property" described in his pleading "as agent of the state and/or person in charge of the uses" therein set forth, should be disregarded, where the appellate court judicially knows it is untrue.

(6) Schools--Legislative Power and Duty. --Const., art. IX, §§ 5, 6, declaring that the Legislature shall provide for "a system of common schools" and "a public school system," make the school system a matter of state care and supervision; the term "system" itself imports a unity of purpose as well as entirety of operation, and the direction to the Legislature to provide "a" system of common schools means one system applicable to all common schools; this duty, so far as the state has by the adoption of the Constitution undertaken it, cannot be delegated to any agency.

(7) Pleading--Motion to Strike--Amended Pleading. --An amended cross-complaint was properly stricken by the trial court where it wholly failed to state a cause of action and was patently frivolous and sham.

(8) Id.--Motion to Strike--Amended Pleading. --Though there is no statutory provision for striking complaints from the files as there is with respect to sham or frivolous answers (Code Civ. Proc., § 453), a court may, by virtue of its inherent power to prevent frustration or abuse of its processes, strike a purported complaint that fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration.

COUNSEL: Alexander Ruiz and Manuel Ruiz, Jr., for Appellant.

Harold W. Kennedy, County Counsel (Los Angeles), and Edwin P. Martin, Deputy County Counsel, for Respondents.

JUDGES: Patrosso, J. pro tem. * Shinn, P. J., and Wood (Parker), J., concurred.

* Assigned by Chairman of Judicial Council.

OPINION BY: PATROSSO

OPINION: [*457] [*59] This is an appeal by cross-complainant Tony Alarcon from an order striking his third amended cross-complaint as against the cross-defendants El Monte School District and county of Los Angeles. (1) [HN1] While an order striking a pleading is not ordinarily appealable, the rule is otherwise where, as here, the cross-complaint is directed against cross-defendants not otherwise parties to the action. (*Trask v. Moore* (1944), 24 Cal.2d 365, 373 [149 P.2d 854].)

The action in which the cross-complaint [*2] was filed is one instituted on behalf of the People of the State of California by [*458] the district attorney of Los Angeles County against numerous defendants, including cross-defendant, alleged to be the owners or occupants of properties within an area comprising some 24 acres located in the county of Los Angeles and commonly known as "Hick's Camp," to abate a public nuisance alleged to exist upon the properties located therein by reason of the maintenance thereon of dilapidated buildings and unsanitary conditions therein more particularly described.

[**60] A demurrer having been sustained with leave to amend to the original cross-complaint, appellant filed a second amended cross-complaint containing four separate causes of action. Demurrsers interposed by the respondents to the latter complaint were sustained without leave to amend as to the first, second and fourth cause of action thereof. Thereafter appellant filed a third amended cross-complaint which was stricken upon motion of the respondents as hereinbefore stated.

The third amended cross-complaint, as is likewise true of its predecessors, is in many respects a remarkable document. It purports to incorporate [*3] therein by reference, the first, second and fourth causes of action of the second amended cross-complaint to which, as previously stated, demurrs had been sustained without leave to amend. It then alleges that the action is brought by the appellant "on behalf of approximately

[sic] 35 persons similarly situated, named defendants, in the second amended complaint of nuisance on file herein, and also as agent for the State of California, and the person in charge of the public uses hereinafter set forth and requested." It then alleges that the El Monte School District and numerous individually named cross-defendants claim an interest in the property described in Exhibit "A," attached to the cross-complaint, which apparently comprises a portion of the property described in plaintiff's complaint, whereon are located the conditions which are sought to be abated as a public nuisance. It further alleges "that the public interest and necessity require that the said property be acquired by cross complainant as agent of the State of California, as provided in section 1001 of the California Civil Code. That cross complainant, Tony Alarcon, is a person, competent and qualified to acquire the [*4] real property and improvements thereon, described herein, as agent of the State and/or person in charge of the uses hereinafter set forth. That cross complainant seeks to take and condemn private property, to wit: Real Estate and improvements, for the public uses hereinafter [*459] set forth. That the plaintiff and cross defendants, El Monte School District, Ernest Roll, District Attorney for Los Angeles County and the County of Los Angeles, are public bodies within the purview of subsection 21 of the section 1238 of the California Code of Civil Procedure, . . . to wit: To demolish, clear, abate or remove buildings from the area known as 'Hicks Camp' and herein described in exhibit 'A,' for the reason that the same are detrimental to the health, safety and morals of the people, and because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings predominating in said area. That the public interest and necessity require the construction by the El Monte School District of a school building and also the acquisition and appropriation by said school district of a site upon which said building may be erected within [*5] that certain tract of land hereinabove described. In conjunction therewith, said public interest and necessity require, that buildings, dwellings and structures within said tract of land be demolished, cleared, abated and/or removed, in the interest of the health, safety and morals of the people, because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings therein, in a manner that will be most compatible with the greatest public good and the least private injury. . . . That there is grave danger of the creation of a public nuisance, unless the public uses herein referred to are provided for and the public interest and necessity stated above be adjudicated [sic]."

The cross-complaint closes with a prayer that the cross-defendants be required to set forth the nature, character, extent and value of their several estates or interest in the parcels of real property sought to be condemned and the severance damage; if any, accruing thereto; that the value of each separate interest or estate sought to be condemned and the severance damages, if any, be ascertained, and that upon payment to the defendants entitled [***6] to compensation [**61] of the several amounts so ascertained, the court make and enter a final order of condemnation, "conveying to cross complainant, as agent for the state, the properties for the public use above set forth."

We have ignored the allegations contained in the first, second and fourth causes of action, contained in the second amended cross-complaint, which were attempted to be incorporated [*460] by reference in the third amended cross-complaint in view of the fact that the demurrs interposed to these causes of action had, as noted, been sustained without leave to amend. (2) The attempted incorporation of these counts in the third amended cross-complaint without leave of the court is ineffective and they may not be treated as a part of the pleading in the case. (39 Cal.Jur.2d p. 339.) Moreover, without here undertaking to set forth in detail the voluminous allegations of said counts, we are completely satisfied that the trial court properly sustained the demurrers thereto without leave to amend. Each of these three causes of action seemingly undertakes to state a cause of action for monetary and injunctive relief against the respondents upon some undiscernible [***7] theory for damages which the cross-complainant and others similarly situated allegedly will sustain if the plaintiff prevails in its action to abate the nuisances alleged to exist upon the properties owned by them.

(3) From the allegations of appellant's pleadings which we have above summarized in some detail, it would appear that the relief which he seeks thereby as against the respondents is a judgment declaring that the public interest and necessity require the construction by the respondent El Monte School District of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" in the cross-complaint described. We know of no law, and none has been called to our attention, which authorizes a private citizen to maintain such an action. [HN2] Where, when or how, if at all, a school district shall construct school buildings is a matter within the sole competency of its governing board to determine. (Montebello Unified School Dist. v. Keay (1942), 55 Cal.App.2d 839, 843-844 [131 P.2d 384].)

If, however, the third amended cross-complaint be construed as one whereby appellant [***8] as a private citizen seeks to acquire property for the purpose of constructing and operating a public school, it is likewise unauthorized by law. Section 1001 of the Civil Code, upon which appellant assertedly seeks to predicate his action, while authorizing any person, as "an agent of the State" or as "a person in charge of such use" to acquire private property under the power of eminent domain for any of the public uses provided in section 1238 of the Code of Civil Procedure is wholly without application. (4) [HN3] A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the [**461] property sought to be acquired to one of the public uses provided in section 1238, but it must likewise be made to appear that he is authorized to devote the property to the public use in question, or otherwise stated, that he is a person authorized to administer or have "charge of such use." (Beveridge v. Lewis (1902), 137 Cal. 619, 621 [67 P. 1040, 70 P. 1083, 92 Am.St.Rep. 188, 58 L.R.A. 581].) (5) While appellant alleges by way of conclusion that he "is a person, competent and qualified to acquire the real property" described in his pleading [***9] "as agent of the State and/or person in charge of the uses" therein set forth, the allegation must be disregarded, because we judicially know it is untrue. (Wilson v. Loew's Inc. (1956), 142 Cal.App.2d 183, 187-188 [298 P.2d 152].) (6) [HN4] "The constitution declares that the legislature shall provide 'for a system of common schools,' or, as expressed elsewhere in the organic law, 'a public school system.'" (23 Cal.Jur. p. 18; Cal. Const., art. IX, §§ 5-6.) "By these two sections, the constitution makes the school system a [**62] matter of state care and supervision. The term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a system of common schools means one system which shall be applicable to all the common schools. And this duty to provide for the education of the children of the state, so far as the state has, by the adoption of the constitution, undertaken it, cannot be delegated to any agency." (23 Cal.Jur. 21-22.) As said in Piper v. Big Pine School Dist., 193 Cal. 664, 669 [226 P. 926]:

"It is in a sense exclusively the function of the state which cannot be delegated to any [***10] 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. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state."

From the allegations of the cross-complaint, it affirmatively appears that "(i)n this case it is the school district, acting through its governing board, that is the agent of the State in charge of the use for which the land was sought." (Montebello Unified School Dist. v. Keay, supra.)

(7) The third amended cross-complaint wholly fails to state a cause of action and is patently frivolous and sham. [*462] It was therefore properly stricken by the trial court. (8) As said by this court in Neal v. Bank of America (1949), 93 Cal.App.2d 678, 682-683 [209 P.2d 825]:

"It may be conceded that [HNS]there is no statutory provision for striking complaints from the files, as there is in respect to sham or frivolous answers. (Code Civ. Proc., § 453.) However, the courts have inherent power, by summary means, to prevent [***11] frustration, abuse, or disregard of their processes. (41 Am.Jur. §§ 346, 347, p. 527; anno., 13 Am.St.Rep. 640.) . . . In Santa Barbara County v. Janssens, 44 Cal.App. 318 [186 P. 372], it was held that an order striking an amended cross-complaint from the files was within the jurisdiction of the trial court, and presumably correct in the absence of error disclosed by the record. The fundamental principle running through the cases is that a court is not required to tolerate a purported amended complaint which fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration. . . . It cannot be doubted that the court had jurisdiction to strike plaintiff's amended complaint on the ground that it was frivolous and a sham and the order clearly was not an abuse of discretion."

The order appealed from is affirmed.

**FREEDOM NEWSPAPERS, INC., Plaintiff and Appellant, v. ORANGE COUNTY
EMPLOYEES RETIREMENT SYSTEM BOARD OF DIRECTORS, Defendant and
Respondent**

No. S029178.

SUPREME COURT OF CALIFORNIA

**6 Cal. 4th 821; 863 P.2d 218; 25 Cal. Rptr. 2d 148; 1993 Cal. LEXIS 6370; 93
Cal. Daily Op. Service 9589; 93 Daily Journal DAR 16426**

December 23, 1993, Decided

PRIOR HISTORY: Superior Court of Orange County, No. 660703, Greer Stroud, Referee.

DISPOSITION: Since the Operations Committee is composed solely of members of the governing body of a local agency numbering less than a quorum of the governing body, the committee's meeting on June 18, 1991, was not subject to the open meeting requirements of the Brown Act. Accordingly, the judgment of the Court of Appeal is reversed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff newspaper appealed an order of the Court of Appeal (California), which reversed a trial court decision denying the newspaper's petition for a writ of mandate that a meeting conducted by defendant, a county retirement board, was subject to the open meeting requirements of the Ralph M. Brown Act, Cal. Gov't Code § 54950 et seq.

OVERVIEW: The county retirement board had a committee that met to recommend changes to the board's travel policy. The newspaper sought to attend the meeting and when permission was denied, it sought a writ of mandate alleging that the committee was subject to the open meeting requirements of the Ralph M. Brown Act (Act), Cal. Gov't Code § 54950 et seq. The trial court denied the petition and entered judgment for the board. The lower appellate court reversed. The court reversed the lower appellate court's decision. The court found that its examination of the history of the Act, both prior to and after the enactment of Cal. Gov't Code §

54952.3, showed that committees comprised of less than a quorum of the legislative body had generally been considered exempt from the Act's open meeting requirements. Since the enactment of § 54952.3, the attorney general had continuously recognized that advisory committees fell within the express less-than-a-quorum exception. While the attorney general's views did not bind the court, they were entitled to considerable weight. Furthermore, the legislature rejected an alternative bill that would have abolished the implicit less-than-a-quorum exception.

OUTCOME: The judgment was reversed because the operations committee of the county retirement board was composed of members of the governing body of a local agency numbering less than a quorum of the governing body and, as such, was not subject to the open meeting requirements of the law.

CORE TERMS: legislative body, local agency, governing body, quorum, advisory committees, Brown Act, open meeting, less-than-a-quorum, composed, advisory committee, advisory, legislative bodies, exempt, deliberation, regular, notice, recommendations, session, openly, Brown Act's, attend, comprised, Ralph M. Brown Act, chairman, italics, standing committee, advisory commission, public agencies, governing board, formal action

LexisNexis(R) Headnotes

*Administrative Law > Governmental Information >
Public Meetings*

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

[HN1] The Ralph M. Brown Act, Cal. Gov't Code § 54950 et seq., provides that all meetings of the legislative body of a local agency shall be open and public, except as otherwise provided in the Act. Cal. Gov't Code § 54953.

Administrative Law > Separation & Delegation of Power > Legislative Controls

[HN2] See Cal. Gov't Code § 54952.

Administrative Law > Governmental Information > Public Meetings

[HN3] See Cal. Gov't Code § 54950.

Governments > Legislation > Interpretation

[HN4] When interpreting a statute the court's primary task is to determine the legislature's intent. In doing so the court turns first to the statutory language, since the words the legislature chose are the best indicators of its intent.

Governments > Legislation > Interpretation

[HN5] When a statute is ambiguous, the court typically considers evidence of the legislature's intent beyond the words of the statute and looks both to the legislative history of the statute and to the wider historical circumstances of its enactment.

Administrative Law > Governmental Information > Public Meetings

[HN6] It is more consistent with the legislative intent to construe the less-than-a-quorum exception contained in Cal. Gov't Code § 54952.3 as an exception to the definition of "legislative body," and thus one of several exceptions to the open meeting requirements of the Ralph M. Brown Act, Cal. Gov't Code § 54950, et seq., rather than merely as an exception to the special procedural requirements of § 54952.3. This interpretation is consistent with the act's purpose of ensuring that the actions of public agencies be taken openly and that their deliberations be conducted openly. § 54950. The exception applies only to an advisory committee that consists solely of members of the legislative body that created it but not enough members to constitute a quorum or, thus, to act as the legislative body. Accordingly, before any action can be taken on such a committee's recommendations the entire legislative body must conduct further public deliberations. Cal. Gov't Code § 54952.

SUMMARY: CALIFORNIA OFFICIAL REPORTS SUMMARY

A newspaper publisher sought a writ of mandate to compel a county employees retirement system board of

directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The trial court denied the petition and entered judgment in favor of the board. (Superior Court of Orange County, No. 660703, Greer Stroud, Referee.) The Court of Appeal, Fourth Dist., Div. Three, No. G011490, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that, since the operations committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" pursuant to the provisions of Gov. Code, § 54952.3, and was therefore excluded from the open meeting requirements of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.). (Opinion by Panelli, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring and dissenting opinion by Mosk, J. Separate dissenting opinion by Kennard, J.)

HEADNOTES: CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

(1a) (1b) Counties § 1—Open Meeting Requirements—Advisory Committee of County Employees Retirement System Board—Committee Composed of Less Than Quorum of Board: Pensions and Retirement Systems § 3—Administration. —The trial court did not err in denying a petition for a writ of mandate brought by a newspaper publisher that was seeking to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory and was composed of four members of the nine-member board. Gov. Code, § 54952.3, exempts from the definition of "legislative bodies" that are subject to the open meeting requirements of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.) advisory committees composed of less than a quorum of the governing body. Although Gov. Code, § 54952.3, could be read to mean that less-than-quorum committees are merely exempt from the formal requirements of that specific statute, the legislative history of the act, including the Legislature's response to court decisions, demonstrates an intent to exempt less-than-quorum advisory committees from all open meeting requirements. Since the committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" and was therefore excluded from the open meeting requirements of the act.

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

[See 7 Witkin, Summary of Cal. Law (9th ed. 1988)
Constitutional Law, § 579.]

(2) State of California § 10—Attorney General—Opinions. —While the opinions of the Attorney General are not binding on the courts, they are entitled to great weight.

COUNSEL:

Helsing & Wray, Mark Cain, Mark Wray and Duffern H. Helsing for Plaintiff and Appellant.

Thomas W. Newton, Renee C. Allison, Harold W. Fuson, Jr., Judith L. Fanshaw, Debra Foust Bruns, Pillsbury, Madison & Sutro, Edward P. Davis, Jr., Judy Alexander, Cooper, White & Cooper, James M. Wagstaffe and Martin Kassman as Amici Curiae on behalf of Plaintiff and Appellant.

Terry C. Andrus, County Counsel, and Donald H. Rubin, Deputy County Counsel, for Defendant and Respondent.

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, John M. Huntington, Assistant Attorney General, Joel S. Primes, Denise Eaton-May and Ted Prim, Deputy Attorneys General, Hatch & Parent, Peter N. Brown and Kelly G. McIntyre as Amici Curiae on behalf of Defendant and Respondent.

JUDGES: Opinion by Panelli, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring and dissenting opinion by Mosk, J. Separate dissenting opinion by Kennard, J.

OPINION BY: PANELLI, J.

OPINION: [*823] [219]**

[***149] [HN1] The Ralph M. Brown Act (Stats. 1953, ch. 1588, § 1, p. 3269, codified as Gov. Code, § 54950 et seq. [hereafter the Brown Act or the Act]) n1 provides that all meetings of "the legislative body of a local agency shall be open and public," except as otherwise provided in the Act. (§ 54953.) At all times relevant to this case the Act contained four separate definitions of "legislative body." n2 We granted review to determine [**220] whether the [***150] Operations Committee of the Retirement Board of Orange County Employees Retirement System (hereafter Board) is a "legislative body" within the meaning of the Brown Act and, therefore, subject to the Act's [*824] open meeting requirements. Because the Operations Committee is an advisory committee composed solely of Board members numbering less than a quorum of the Board, we hold that the committee is not a "legislative body" pursuant to the

provisions of section 54952.3 and is thereby excluded from the open meeting requirements of the Act.

n1 All statutory references are to the Government Code unless otherwise noted.

A new law changing the relevant provisions of the Government Code was enacted while this case was pending. (Sen. Bill No. 1140 (1993-1994 Reg. Sess.), Stats. 1993, ch. 1138, eff. Apr. 1, 1994.) The impact of the new law is addressed in footnote 11, *post*. Except in that footnote, all references to the Government Code in this opinion are to the current version, i.e., the law as it will be until Senate Bill No. 1140 takes effect on April 1, 1994.n2 [HN2] Section 54952: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation."

Section 54952.2: "As used in this chapter, 'legislative body' also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Section 54952.3: "As used in this chapter[,] 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. [P] Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. [P] If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required. [P] 'Legislative body' as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body. [P] The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section."

Section 54952.5: "As used in this chapter[,] 'legislative body' also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency."

I. FACTS

The Orange County Employees Retirement System is governed by a nine-member Board. Five members of the Board constitute a quorum. The Board is a "local agency" and a "legislative body" under sections 54951 and 54952 respectively. The Board is therefore subject to the open meeting requirements of the Brown Act. The chairman of the Board has created five advisoryⁿ³ committees—operations, benefit, investment, real estate, and liaison—each composed of four members of the Board. Some members serve on more than one committee. The committees' function is to review various matters related to the business of the Board and to make recommendations to the full Board for action. The Board considers the committees' recommendations in public meetings, at which time there is an opportunity for full public discussion and debate. The committees do not have any decisionmaking authority and act only in an "advisory" capacity.ⁿ⁴

ⁿ³ The parties do not dispute that these committees are properly described as "advisory."ⁿ⁴ The only evidence concerning the composition and function of the committees is a declaration by the administrator of the retirement system. The declaration states:

"[P] 4. . . All of the committees of the Board of Retirement, including the Operations Committee, are comprised solely of members of the Board of Retirement. The Board of Retirement has nine members, and a quorum is five. However, none of the committees of the Board of Retirement are comprised of more than four members, and all committee members are also members of the Board of Retirement. . . [P]. 5. The function of such committees is to review

various matters related to the business of the Board of Retirement, and make recommendations to the full Board for action. The committees have not been delegated any decision-making authority. The committees act in an advisory capacity, and make recommendations to the full Board of Retirement. The full Board considers those recommendations in public meetings, at which time there is an opportunity for full public discussion and debate on those recommendations. [P] 6. The committees are formed by the Chairman of the Board of Retirement. The Chairman determines what committees shall operate, and which members of the Board of Retirement shall serve on such committees. The Chairman has the authority to form new committees, abolish existing committees, or combine existing committees. There is no Board rule or regulation which prescribes the number of Board committees, or the duties of any such committee; it is up to the Chairman of the Board of Retirement to decide what committees shall be formed, and who will serve on them."

On June 18, 1991, the Operations Committee met to formulate a list of recommended changes to the Board's travel policy. Freedom Newspapers sought to attend the meeting but the committee denied permission on the ground that it was not subject to the open meeting requirements of the [*825] Brown Act. The next day, June 19, the full Board met in a public session at which the chairman of the Operations Committee read and explained the committee's recommendations. The press was in attendance, and there was public discussion among the Board's members about the recommendations. The Board ultimately voted eight to one in public session to accept the recommendations.

[**221] [***151] On the same day, Freedom Newspapers petitioned the trial court for a writ of mandate alleging that the Operations Committee is subject to the open meeting requirements of the Brown Act. The trial court denied the petition and entered judgment in favor of the Board. Freedom Newspapers appealed from that judgment, and the Court of Appeal reversed. We granted the Board's petition for review.

II. DISCUSSION

The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. (§ 54950.) n5 5. The Act provides that "[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." (§ 54953.) As

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

already noted, "legislative body" is defined in four sections of the Act, two of which pertain to the case before us. (§ 54952, 54952.3.) Section 54952 provides that any committee or body on which officers of a local agency serve in their official capacity and which is supported by its appointing local agency is a "legislative body." (§ 54952.) n6 Section 54952.3 more specifically addresses "advisory" bodies: "As used in this chapter[,] 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. [P]... [P] 'Legislative body' as defined in this section does not include a committee composed solely of members of the governing body of [*826] a local agency which are less than a quorum of such governing body." (§ 54952.3, n7 7 italics added.)

n5 [HN3] Section 54950 provides: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [P] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." n6 For the full text of section 54952, see *ante*, footnote 2. n7 For the full text of section 54952.3, see *ante*, footnote 2.

(1a) The parties in this case disagree over the meaning of the explicit less-than-a-quorum exception contained in section 54952.3. The Board and its amici curiae, including the Attorney General, argue that an advisory committee that is excluded from the definition of "legislative body" under the exception is completely exempt from the open meeting requirements of the Act. n8

n8 Like the Brown Act, the 1972 Federal Advisory Committee Act generally subjects advisory committees to open meeting requirements. (86 Stat. 770, as amended, 5 U.S.C.S. Appen. § 1-15.) However, the same act,

as amended, also specifically exempts "any [advisory] committee which is composed wholly of full-time officers or employees of the Federal Government" from the open meeting requirements. (5 U.S.C.S. Appen. § 3(2)(C)(iii).)

In opposition, Freedom Newspapers and its amici curiae contend that the less-than-a-quorum exception in section 54952.3 merely exempts less-than-a-quorum committees from the special, relaxed procedural requirements of section 54952.3. According to Freedom, such committees remain subject to the stricter open meeting requirements that are generally applicable to "legislative bodies" under section 54952.

[HN4] When interpreting a statute our primary task is to determine the Legislature's intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

Each party asserts that the language of section 54952.3 supports its view. Freedom [*222] [***152] reasons that, had the Legislature intended to exempt less-than-a-quorum advisory committees from the Act's open meeting requirements, it would have used language such as this: "'legislative bodies' as defined in *this chapter* shall not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body." Because the Legislature used the words "in this section," instead of "in this chapter," the effect of the less-than-a-quorum exception, according to Freedom, is simply to exclude less-than-a-quorum committees from the terms of section 54952.3 rather than from other definitions of "legislative body" within the Act.

In contrast, the Board argues that, because section 54952.3 specifically refers to "any . . . : advisory committee," that section alone governs advisory [*827] committees for the purposes of the Act. To support its interpretation the Board relies, in part, on the traditional rules of statutory construction that specific statutes govern general statutes (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 [7 Cal.Rptr.2d 245, 828 P.2d 147]; see also *Yoffie v. Marin Hospital Dist.* (1987) 193 Cal.App.3d 743, 750-753 [238 Cal.Rptr. 502]; *Kennedy v. City of Ukiah* (1977) 69 Cal.App.3d 545, 552 [138 Cal.Rptr. 207]) and that, to the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute (*Common Cause v. Board of Supervisors*

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

(1989) 49 Cal.3d 432, 443 [261 Cal.Rptr. 574, 777 P.2d 610]; *Yoffie v. Marin Hospital Dist.*, *supra*, 193 Cal.App.3d at p. 751). According to the Board, an advisory committee that is excluded from the definition of "legislative body" contained in section 54952.3 is not subject to the Act's open meeting requirements, even if it might otherwise satisfy the more general definition of "legislative body" contained in section 54952.

The Board also argues that Freedom's interpretation of section 54952 would deprive sections 54952.2 and 54952.5, as well as the less-than-a-quorum exception in 54952.3, of meaning. To explain, sections 54952.2 and 54952.5 purport to include only certain bodies within the definition of "legislative body." For the Legislature to have enacted those statutes would have made no sense if the governmental bodies described therein had already been included in the more general definition of "legislative body" contained in section 54952.

To be sure, one could argue that section 54952.3 might still have some meaning under Freedom's interpretation. Because section 54952.3 gives certain advisory bodies the benefit of procedural requirements that are less stringent than the requirements applicable to "legislative bodies" under section 54952, under Freedom's interpretation the exception contained in section 54952.3 for less-than-a-quorum advisory committees would have the effect of subjecting such committees to the stricter, generally applicable procedural requirements.

But Freedom's interpretation of section 54952.3 would also result in absurdity. If we construed section 54952.3 merely as exempting less-than-a-quorum advisory committees from the less rigid procedural requirements in that section, even a temporary, ad hoc advisory committee composed solely of less than a quorum of the governing body would be subject to all of the Brown Act's generally applicable procedural requirements, including the requirement that committees hold "regular" meetings. (§ 54954.) Yet a [*828] temporary, ad hoc committee, by definition, does not hold "regular" meetings. We will not give a statute an absurd interpretation. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]; *Gage v. Jordan* (1944) 23 Cal.2d 794, 800 [147 P.2d 387]; *Lynch v. State Bd. of Equalization* (1985) 164 Cal.App.3d 94, 114 [210 Cal.Rptr. 335].)

Freedom attempts to avoid the absurdity by characterizing the Operations Committee as a standing committee. However, neither section 54952 nor section 54952.3 distinguishes between ad hoc advisory committees [**223] [***153] and standing advisory committees. We will not add to a statute a distinction that

has been omitted. (Code Civ. Proc., § 1858; see, e.g., *Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 [275 Cal.Rptr. 201, 800 P.2d 557].)

[HNS] When a statute is ambiguous, as in this case, we typically consider evidence of the Legislature's intent beyond the words of the statute (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323]) and look both to the legislative history of the statute and to the wider historical circumstances of its enactment (*ibid.*). An examination of the history of the Brown Act, both prior to and after the enactment of section 54952.3, shows that committees comprised of less than a quorum of the legislative body have generally been considered exempt from the Act's open meeting requirements.

In 1958 the Attorney General, interpreting the original version of section 54952, n9 concluded that "meetings of committees of local agencies where such committees consist of less than a quorum of the legislative body are not covered by the act." (*Secret Meeting Law*, 32 Ops.Cal.Atty.Gen. 240, 242 (1958).) The Attorney General reasoned that, "[i]n those cases the findings of such a committee have not been deliberated upon by a quorum of the legislative body and the necessity, as well as the opportunity, for full public deliberation by the legislative body still remains." (*Ibid.*)

n9 In 1958 section 54952 provided: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof." (Stats. 1953, ch. 1588, § 1, p. 3270.)

Successive Attorneys General have consistently adhered to the view stated in the 1958 opinion. In 1968 the Attorney General wrote that "[w]e have consistently concluded that committees composed of less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of [*829] that Act. In view of the lack of any pronouncements on the parts of either the courts or the Legislature which would compel a different conclusion, our opinion remains unchanged." (Cal. Atty. Gen., Indexed Letter No. IL 68-106 (Apr. 29, 1968).)

More specifically, since the enactment of section 54952.3 the Attorney General has continuously recognized that advisory committees falling within the express less-than-a-quorum exception in section 54952.3 are not "legislative bodies" within the meaning of the Brown Act. (See, e.g., Cal. Atty. Gen., Indexed Letter No. IL 69-131 (June 30, 1969); *Secret Meetings Laws*

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

Applicable to Public Agencies (Cal. Atty. Gen., 1972) pp. 6-8; *Closed Meetings*, 63 Ops. Cal. Atty. Gen. 820, 823 (1980); *Open Meeting Requirements*, 64 Ops. Cal. Atty. Gen. 856, 857 (1981).) The Attorney General's brief in this case supports the long-standing view of his office. (2) While the Attorney General's views do not bind us (*Unger v. Superior Court* (1980) 102 Cal. App. 3d 681, 688 [162 Cal. Rptr. 611]), they are entitled to considerable weight (*Meyer v. Board of Trustees* (1961) 195 Cal. App. 2d 420, 431 [15 Cal. Rptr. 717]). (1b) This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements. (See, e.g., *Open Meeting Laws* (Cal. Atty. Gen., 1989).)

In 1961 the Legislature amended the Brown Act, not in response to the Attorney General's recognition of an implicit less-than-a-quorum exception, but in response to a judicial opinion that essentially eviscerated the Act by restrictively defining the terms "meeting" and "legislative body." The court in *Adler v. City Council* (1960) 184 Cal. App. 2d 763 [7 Cal. Rptr. 805] (*Adler*) held that a city's planning commission did not violate the Brown Act when all but one of its members attended a dinner given a few days before the host's application to the commission for an amendment to the zoning law. The court held that "the [**224] Brown Act was not [***154] directed at anything less than a formal meeting of a city council or one of the city's subordinate agencies." (*Id.* at p. 770.) Misconstruing the Attorney General's 1958 opinion (*Secret Meeting Law, supra*, 32 Ops. Cal. Atty. Gen. 240), which addressed committees composed of less than a quorum of the governing body, the court also held that the Act did not apply to any committee of an advisory nature, whether or not composed of a quorum of the governing body. (*Adler, supra*, 184 Cal. App. 2d at p. 771.)

In response to the *Adler* decision, the Legislature broadened the scope of the Brown Act the very next year. (Stats. 1961, ch. 1671, §. 1, p. 3637, [*830] amending § 54952 and 54957, and adding § 54952.5, 54952.6, and 54960.) Shortly after the 1961 amendments took effect, the Attorney General construed them as disapproving *Adler* on several points. (*Secret Meeting Law*, 42 Ops. Cal. Atty. Gen. 61 (1963).) Specifically, the Attorney General concluded that the 1961 amendments "disapproved *Adler*'s restrictive interpretation of the word 'meeting' by recognizing that criminally prohibited legislative action may be taken at gatherings that fall far short of the 'formal assemblages of the council sitting as a joint deliberative body'" and "repudiated that portion of the *Adler* decision which held that the act was not meant to apply to planning commissions or other

bodies of an 'advisory' nature." (*Secret Meeting Law, supra*, 42 Ops. Cal. Atty. Gen., at pp. 64-65.)

In addition to the history set out above, the history of the Brown Act in the Legislature reflects a recognition of the implicit less-than-a-quorum exception and, after the consistent failure of proposals to abolish it, the codification of a limited version of that exception.

A 1963 bill would have abolished the exception by providing that "[a]ll meetings of any committee or subcommittee of a legislative body, *whether or not composed of a quorum of the members of the legislative body*, shall be open and public, and all persons shall be permitted to attend any meeting of such committee or subcommittee, except during consideration of the matters set forth in Section 54957." (Assem. Bill No. 2334 (1963 Reg. Sess.) § 2, italics added.) The bill did not pass.

The legislative history of section 54952.3, the provision at issue in this case, reveals another unsuccessful attempt to abolish the implicit less-than-a-quorum exception. Section 54952.3, enacted in 1968 (Stats. 1968, ch. 1297, § 1, p. 2444), extended the coverage of the Brown Act to certain advisory committees that were not previously covered. However, at the same time the Legislature rejected an alternative bill that would have abolished the implicit less-than-a-quorum exception by making all advisory committees subject to the full procedural requirements applicable to governing bodies. (Sen. Bill No. 717 (1968 Reg. Sess.).) n10 The bill that did pass (Assem. Bill No. 202 (1968 Reg. Sess.), codified as § 54952.3) thus appears to be a compromise, incorporating into the open meeting requirements of the Brown [*831] Act advisory committees that were not previously included within the Act, but relaxing the procedural requirements applicable to those committees and codifying a limited version of the implicit less-than-a-quorum exception.

n10 Senate Bill No. 717 would have amended section 54952 by adding the italicized words: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board, commission, committee, *advisory committee, or subcommittee* thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation." (Sen. Bill No. 717 (1968 Reg. Sess.), italics in original.)

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

To support its view that the committees excluded from the definition of "legislative body" in section 54952.3 were included in another definition of "legislative body," Freedom Newspapers relies on a communication by Assemblyman Hayes to the members of the Assembly discussing his reasons for drafting the less-than-a-quorum [**225] exception. [***155] Assemblyman Hayes claimed that "[t]he reason [for enacting the less-than-a-quorum exception in section 54952.3] was that such committees of the governing body of a local agency are covered by another section of the Ralph M. Brown Act, Government Code Sec. 54952." (4 Assem. J. (1968 Reg. Sess.) p. 7163.) However, these comments offer little assistance in the interpretation of section 54952.3 because they do not necessarily reflect the views of other members of the assembly who voted for section 54952.3. (Cf. *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 801, fn. 12 [268 Cal.Rptr. 753, 789 P.2d 934]; see also *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 700-701 [170 Cal.Rptr. 817, 621 P.2d 856]; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589-590 [128 Cal.Rptr. 427, 546 P.2d 1371].)

Indeed, the Legislature's action in two respects since the 1968 enactment of section 54952.3 indicates its continuing understanding that advisory committees comprised solely of less than a quorum of the governing body are exempt from the open meeting requirements of the Act.

First, although legislative acquiescence is a weak indication of legislative intent (*People v. Escobar* (1992) 3 Cal.4th 740, 751 [12 Cal.Rptr.2d 586, 837 P.2d 1100]), we note that the Legislature has allowed the Court of Appeal's opinion in *Henderson v. Board of Education* (1978) 78 Cal.App.3d 875 [144 Cal.Rptr. 568] to govern meetings of less-than-a-quorum advisory committees for the past 14 years.

The *Henderson* court squarely addressed the issue of whether an advisory committee consisting solely of governing board members, constituting less than a quorum of the board, was exempt from the open meeting requirements of the Act. (78 Cal.App.3d at pp. 880-883.) In *Henderson*, ad hoc advisory committees had been created for the purpose of advising the board of education about the qualifications of candidates for appointment to a vacant position. Each of the advisory committees was composed solely of members [*832] of the governing body of the school district numbering less than a quorum of the governing body. The court considered whether the advisory committees had violated the Brown Act when they evaluated the candidates' qualifications and interviewed candidates in private

sessions. (*Id.* at p. 877.) Finding that section 54952.3 provided an express exemption from the open meeting requirements of the Brown Act for advisory committees comprised solely of less than a quorum of the governing body, the *Henderson* court held that the advisory committees in that case were not subject to the Act. (78 Cal.App.3d at pp. 880-881.)

Secondly, and more importantly, the Legislature in 1992 attempted to extend the coverage of the Brown Act by limiting the coverage of the express less-than-a-quorum exception in section 54952.3 to ad hoc advisory committees. This legislation is the strongest indication that the current version of section 54952.3 excludes less-than-a-quorum advisory committees from the Act's open meeting requirements, rather than merely from the less-stringent procedural requirements in section 54952.3. On August 31, 1992, the California Legislature passed and sent to the Governor a bill amending the explicit less-than-a-quorum exception as follows: "Legislative body" as defined in this section does not include a *limited duration ad hoc committee* composed solely of members of the governing body of a local agency which are less than a quorum of the governing body *but does include any standing committee* of a governing body irrespective of its composition. For purposes of this section, 'standing committee' means a permanent body created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency and which holds regularly scheduled meetings." (Assem. Bill. No. 3476 (1991-92 Reg. Sess.) § 3, italics added.) The Governor vetoed this bill, reasoning that its economic impact would be too great in view of the state's fiscal outlook. In his veto message the Governor stated: "This [**226] bill would make a number of changes in the Ralph M. Brown [***156] Act relating to open meetings. It would expand the number of local agencies subject to the law, and expand notice, recordation, and recordkeeping requirements. . . . [P] I cannot approve mandating expensive new requirements while we are unable to afford the ones on the books today." (Governor's veto message to Assem. on Assem. Bill No. 3476 (Sept. 20, 1992) Recess J. No. 24 (1991-1992 Reg. Sess.) p. 10271, italics added.) n11

n11 On October 10, 1993, the Governor signed into law Senate Bill No. 1140 (Stats. 1993, ch. 1138), which changes, as of April 1, 1994, the Brown Act's definition of "legislative body." Among other things, the new law amends section 54952 and repeals sections 54952.2, 54952.3, and 54952.5.

The newly amended section 54952 codifies an exception for less-than-a-quorum advisory

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

committees in these words: "[A]dvisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter." (§ 54952, subd. (b), as amended by Sen. Bill No. 1140 (1993-1994 Reg. Sess.); 1993 Stats., ch. 1138, eff. Apr. 1, 1994.)

This case does not present the issue whether the Operations Committee would be a "legislative body" under the new law. Accordingly, we express no opinion on the issue.

The Legislature's adoption of subsequent, amending legislation that is ultimately vetoed may be considered as evidence of the Legislature's understanding of the unamended, existing statute. (See *Eu v. Chacon* (1976) 16 [*833] Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289]; see also *Irvine v. California Emp. Com.* (1946) 27 Cal.2d 570, 578 [165 P.2d 908].) The 1992 legislation reflects the Legislature's understanding that the current version of the explicit less-than-a-quorum exception in section 54952.3 excludes advisory committees, whether ad hoc or standing, composed solely of less than a quorum of the members of the governing body from the open meeting requirements of the Act.

The 1992 legislation "would [have] exclude[d] a limited duration ad hoc committee from the definition of legislative body but would [have] include[d] any standing committee, as defined, of a governing body irrespective of its composition." (See Legis. Counsel's Dig., Assem. Bill No. 3476 (1991-1992 Reg. Sess.).) Because the 1992 legislation retained the "in this section" language (§. 54952.3) and made no amendment to the general language in section 54952, the legislation would only make sense if the Legislature gave the words "in this section" the same meaning that the Board attributes to them in the current statute. If the Legislature had intended "in this section" to be interpreted as narrowly as Freedom suggests, the 1992 legislation would have had this bizarre result: Limited-duration, ad hoc, advisory committees would have been subject to the full set of procedural requirements applicable to governing bodies, including the requirement of holding "regular meetings," but standing advisory committees would have received the benefit of the relaxed procedural requirements described in section 54952.3. This clearly could not have been the intended effect of the 1992 bill.

In view of these considerations, we find [HN6] it more consistent with the legislative intent to construe the less-than-a-quorum exception contained in section 54952.3 as an exception to the definition of "legislative body," and thus one of several exceptions to the Brown Act's open meeting requirements, n12 rather than merely as an exception to the special procedural requirements of section 54952.3. This interpretation is consistent with the Act's [*834] purpose of ensuring that the "actions [of public agencies] be taken openly and that their deliberations be conducted openly." (§ 54950.) By definition, [*227] the exception applies [***157] only to an advisory committee that consists solely of members of the legislative body that created it but not enough members to constitute a quorum or, thus, to act as the legislative body. Accordingly, before any action can be taken on such a committee's recommendations the entire legislative body, which includes the members of the advisory committee, must conduct further, public deliberations. (§ 54952.) In this way the Act reasonably accommodates the practical needs of governmental organizations while still protecting the public's right to know.

n12 Compare section 54956.9 (legislative body may hold closed sessions to confer with legal counsel regarding pending litigation); section 54957 (legislative body may hold closed sessions to confer with Attorney General, district attorney, sheriff, chief of police, or their respective deputies, on matters posing a threat to the security of public buildings); section 54957.6 (legislative body may hold closed sessions to discuss matters related to employee compensation and collective bargaining).

III. DISPOSITION

Since the Operations Committee is composed solely of members of the governing body of a local agency numbering less than a quorum of the governing body, the committee's meeting on June 18, 1991, was not subject to the open meeting requirements of the Brown Act. Accordingly, the judgment of the Court of Appeal is reversed.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred.

DISSENT BY: MOSK, J., KENNARD, J.

DISSENT:

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

Concurring and Dissenting.--Although I have no quarrel with the result reached by the majority, I find that virtually all their reasoning has been rendered moot by the enactment of the 1993 legislation quoted in footnote 11 of the majority opinion. (Stats. 1993, ch. 1138.)

That legislation answers the question we took this case to resolve, i.e., whether advisory committees composed solely of members of a legislative body are themselves "legislative bodies" for purposes of the Ralph M. Brown Act. (Gov. Code, § 54950 et seq.) The 1993 legislation plainly declares they are not, unless they qualify as "standing committees" therein defined.

In light of this development the majority opinion has become an anachronism; indeed, the 1993 legislation repeals the very statute discussed by the majority at length. (Gov. Code, § 54952.3.) Because it is not our responsibility to offer advisory opinions on repealed statutes, I would dismiss review in this case as improvidently granted. [*835]

I dissent.

California's Open Meeting Law n1 requires legislative bodies to give notice of the time and place of their meetings and to make such meetings open and accessible to the public. The stated purpose of this law is to assure that Californians can be fully informed about the legislative decisionmaking process of elected and appointed officials. Under the majority opinion, however, a legislative body is entirely free to conduct the public's business in private session, shielding its decisionmaking process from scrutiny by the press or public, simply by dividing itself into various "standing committees" whose membership does not comprise a quorum of the full legislative body. n2 The majority reaches this result by interpreting the Brown Act to exempt such committees from compliance with *any* of the Act's requirements. The majority's interpretation contorts the statutory language and contravenes the goal of this state's Open Meeting Law.

n1 This law, which is codified in Government Code section 54950 et seq., is also known as the Ralph M. Brown Act, and will hereafter be referred to alternatively as the "Brown Act" or the "Act."

n2 Of course, in the case of a "committee" whose members make up a quorum or more-than-a-quorum of the membership of the full governing body, the committee would not be a "committee" at all; it would be the governing body.

I

This case arose out of the June 18, 1991, meeting of the "Operations Committee" of the Board of Directors of the Orange County Employees Retirement System. The Board administers \$1.5 billion, consisting of moneys derived from the county's general fund as well as those contributed by employees. The "Operations Committee" is one of five standing committees that report to the full Board. The membership of the [**228] Operations Committee [***158] (and of each of the other standing committees) consists of four of the nine Board members--one person less than a quorum of the Board.

The purpose of the June 18, 1991, meeting was to reevaluate the Board's travel policy--a policy that had engendered substantial controversy after it was reported that some Board members had used public funds to tour Europe, assertedly in connection with Board investments. A reporter for the Orange County Register, a daily newspaper, tried to attend the meeting but was refused entry.

The next day, the newspaper's parent company, Freedom Newspapers, Inc., petitioned the superior court for a writ of mandate, seeking access to future meetings of the Operations Committee. The superior court denied the [*836] petition. The Court of Appeal reversed, however, concluding that the Operations Committee was a "legislative body of a local agency" whose meetings were consequently required by the Brown Act to be "open and public." (Gov. Code, § 54953.) n3

n3 Further undesignated statutory references are to the Government Code.

This court granted the Board's petition for review and now reverses the judgment of the Court of Appeal.

As I shall explain, the Court of Appeal reached the correct result.

II

In the preamble to the Brown Act, the Legislature expressed the intent underlying the Act: "[T]he Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [P] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

The people insist on remaining informed so that they may retain control over the instruments they have created." (§ 54950.)

Consistent with this stated legislative intent, the Act requires that all meetings of legislative bodies of local agencies "be open and public" and that all persons "be permitted to attend" such meetings. (§ 54953.) The Act does, however, permit legislative bodies to discuss in "closed session" certain sensitive topics, such as pending litigation and personnel matters. n4

n4 The Act permits closed session meetings when an agency discusses a license application by someone with a criminal record (§ 54956.7), or meets with its negotiator regarding the price and terms acceptable to the agency in a real property transaction (§ 54956.8), or discusses pending litigation with legal counsel (§ 54956.9), or participates in a joint agency meeting about insurance pooling, tort liability losses, or workers' compensation liability (§ 54956.95), or discusses employee wages and benefits with its labor negotiator (§ 54957.6), or participates in meetings regarding multijurisdictional drug law enforcement (§ 54957.8).

The Act also requires "legislative bodies" to conduct "regular" meetings (§ 54954) and abide by certain rules pertaining to adjournment or continuance of such meetings (§ 54955, 54955.1). Additional requirements are posting the agenda of each regular meeting, acting only on items listed on the posted agenda (§ 54954.2), and giving written notice one week before [*837] each regular meeting to anyone requesting such notice (§ 54954.1). The Act does allow for special meetings, but only if they are preceded by a 24-hour written notice. (§ 54956.)

The Act defines "legislative bodies" broadly. The term includes "the governing board, commission, directors or body of a local agency, or any board or commission thereof" as well as "any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency . . ." (§ 54952.) The term also applies to "any board, commission, committee, or similar multimember [**229] body which exercises any [***159] authority of a legislative body of a local agency" (§ 54952.2), as well as to "planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency" (§ 54952.5).

The "Operations Committee" of the Board of Directors of the Orange County Employees Retirement System, as a "committee . . . on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency," qualifies as a "legislative body" within the meaning of section 54952, thus making it subject to the Brown Act's "open meeting" requirements. The issue in this case is whether the Operations Committee is exempted by another, more specific, provision of the Act, section 54952.3, from holding meetings open to the public.

Section 54952.3 provides for less stringent notice requirements for meetings of "any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency." Under this section, an advisory commission, committee or body is a "legislative body" for purposes of the *open meeting* requirements of the Act. Such a legislative body can, however, elect between giving 24-hour written notice of its meetings or providing by rule or bylaw for its meetings to be held at a regular time: "[n]o other notice of regular meetings is required." (§ 54952.3.)

Section 54952.3 further provides that a "[l]egislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are *less than a quorum* of such governing body. (Italics added.) It is on this italicized phrase that the majority rests its conclusion that advisory committees made up only of members of the full governing body but "less than a quorum" of that body [*838], are exempt from any of the requirements of the Brown Act. Thus, under the majority's interpretation, the Operations Committee was free to conduct its business in private.

I disagree with the majority's interpretation of section 54952.3's "less-than-a-quorum" provision. In my view, this provision by its express terms excludes those advisory committees composed solely of members of the full governing body of the local agency only from the "relaxed" notice requirements of section 54952.3, thereby making such advisory bodies subject to the more rigid requirements that govern legislative bodies generally.

My interpretation of the "less-than-a-quorum" provision is compelled by the plain language of section 54952.3, which must be the starting point for this statutory interpretation. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823 P.2d 1216].) After specifying that advisory commissions or committees are "legislative bodies" for purposes of the

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

Brown Act, section 54952.3 next describes the less stringent procedural requirements for the meetings of such advisory bodies. It then states that "[l]egislative body" as defined in this section does not include a committee composed solely of members of the governing body of the local agency which are less than of quorum of such governing body." By the limiting language, "as defined in this section," the provision carves out an exception from section 54952.3's definition of "legislative body" (and thus from the section's less stringent notice requirements) for an advisory committee composed solely of members of the governing body of the local agency who comprise less than a quorum of the local agency's full membership.

Therefore, in this case the Operations Committee of the Board of Directors of the Orange County Employees Retirement System, as an advisory committee composed solely of members of the full governing body of the local agency (the Board), is not a "legislative body" for purposes of the relaxed notice requirements of section 54952.3. Rather, as I explained earlier, the Operations Committee meets section 54952's definition of "legislative body" as being a "committee . . . on which officers [**230] of a local agency serve in their [***160] official capacity as members and which is supported in whole or in part by funds provided by such agency . . ." As such, the Operations Committee is subject to the full force of the Brown Act. Most important, the committee must conduct its business in public.

To require an advisory committee that, as here, is comprised of individuals who are members of the governing body to which the committee reports to conduct public meetings would further the Legislature's stated intent that [*839] "the people's business" be conducted openly, and that both the "actions" and the "deliberations" of government be open to the press and public. Even though the Operations Committee cannot itself bind the full Board by "actions" such as adopting a proposal or enacting a rule (which would require a majority vote of the full Board), it can and does "deliberate." "Deliberation" is defined as "the process . . . of thoughtful and lengthy consideration" or as "formal discussion and debate on all sides of an issue." (American Heritage Dict. of the English Language (1980) p. 349.) Indeed, to best assure that government decisions follow thoughtful and lengthy consideration or debate of all sides of an issue, the Brown Act invites the public to witness that whole process.

A standing committee's reconsideration of a significant policy that affects the public's trust and confidence in its government officials--such as the Board's travel policy here--necessarily involves deliberation. Yet, under the majority's interpretation of

section 54952.3, this deliberation can take place in private session outside the scrutiny of the public. And when, as in this case, the makeup of the standing committee recommending a policy change is just one member short of a quorum of the full governing body, and only one additional vote is needed to make the recommended change, there may be little further debate or deliberation on the issue by the full Board. In that event, the public is deprived of its right to witness the deliberative processes of government. Indeed, under the majority's reading of section 54952.3, any local agency wishing to keep its deliberative processes from the public can effectively do so by referring controversial issues to standing committees comprised of one member less than a quorum.

The majority's interpretation of section 54952.3 rests first on its conclusion that construing section 54952.3 to exempt from the less stringent procedural requirements specified by that section *all* less-than-a-quorum advisory committees composed solely of members of the governing body would "result in absurdity" by making even temporary, ad hoc advisory committees subject to the Brown Act's "generally applicable procedural requirements," including that set out in section 54954 of holding "regular" meetings. (Maj. opn., *ante*, at p. 827.) But to require a temporary, ad hoc advisory committee to conduct its meetings at a regular time seems far less absurd than to permit, as the majority does here, a local agency to use standing committees to shield discussion and deliberation on controversial issues from public scrutiny. n5

n5 Fortunately, the majority's opinion, though misguided, will be short-lived. New legislation (Stats. 1993, ch. 1138), which changes the Brown Act's definition of "legislative body" effective April 1, 1994, draws a distinction between "ad hoc" and "standing" advisory committees, and specifies that the latter, to the extent they "have a continuing subject matter jurisdiction," are covered by the Brown Act's "open meeting" requirements. (§ 54942, subd. (b), as amended by Sen. Bill No. 1140 (1993-1994 Reg. Sess.), Stats. 1993, ch. 1138, § 3, eff. Apr. 1, 1994.)

The majority relies also on opinions by the Attorney General (which the majority admits do not bind this court) and on a series of failed legislative [*840] efforts to amend the Brown Act. But we need not turn to unpassed or vetoed legislation to discern the Legislature's intent. The Legislature has made its intent plain in the preamble to the Brown Act, which expressly states that to ensure that Californians can remain informed and

6 Cal. 4th 821, *; 863 P.2d 218, **;
25 Cal. Rptr. 2d 148, ***; 1993 Cal. LEXIS 6370

"retain control" over their own government, legislative deliberations must be conducted openly. "Vital" to the functioning of any democratic society is "an [**231] informed citizenry." [***161] (*John Doe Agency v. John Doe Corp.* (1989) 493 U.S. 146, 152 [107 L.Ed.2d

462, 110 S.Ct. 471].) Consistent with our Legislature's intent, I would affirm the Court of Appeal's judgment directing that the Board allow members of the press and the public to attend "its regular committee meetings," including those of its Operations Committee.

KEITH L. PRESCOAT, Plaintiff-Respondent, v. UNITED STATES OF AMERICA, Defendant-Petitioner; KEITH L. PRESCOAT, Plaintiff-Respondent-Appellee, v. UNITED STATES OF AMERICA, et al., Defendants, and REYNOLDS ELECTRICAL AND ENGINEERING COMPANY, INC., a Nevada Corporation, Defendant-Petitioner-Appellant

CA Nos. 83-1948, 83-1949

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

731 F.2d 1388; 1984 U.S. App. LEXIS 23179

February 15, 1984, Argued and Submitted
April 25, 1984, Decided

PRIOR HISTORY: [**1]

Appeal from the United States District Court for the District of Nevada. Roger D. Foley, District Judge, Presiding.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant employer sought review of the judgment of the United States District Court for the District of Nevada, which concluded that plaintiff employee could bring a tort action against defendants, employer and United States, on the ground that a reimbursement agreement regarding "disability" insurance between the state industrial commission and the United States Atomic Energy Commission was void.

OVERVIEW: Defendant United States contracted with defendant employer to test nuclear weapons. The United States Atomic Energy Commission entered an agreement with defendant employer, whereby defendant United States would pay for insurance that defendant employer would provide under the Nevada Industrial Insurance Act and the Nevada Occupational Disease Act. Next, the atomic energy commission promised to reimburse the Nevada Industrial Commission for disability awards to defendant employer's employees. Defendant employer never paid any premiums for coverage. Plaintiff employee filed a claim in tort against defendant when the United States Department of Energy did not take action on his claim. The district court held that the agreement between the commissions was void, as the industrial commission lacked authority to enter into it. The court affirmed the judgment, holding that plaintiff was entitled to bring an action in tort, as the agreement was void because it did not qualify as a "pledge of assets," under Nev. Rev. Stat. § 616.395(3). The industrial commission did not have authority to enter into the agreement, as the state legislature had not expressly conferred such authority.

OUTCOME: The court affirmed the judgment, holding that the district court had properly determined that the agreement between the state industrial commission and the United States Atomic Energy Commission to provide benefits for defendant employer's employees was void, as the industrial commission did not have authority to make such an agreement. Therefore, plaintiff employee was entitled to bring a tort action against defendant.

CORE TERMS: pledge, premium; Nevada Industrial Insurance Act, Nevada Occupational Diseases Act, authority to enter, reimbursement, reimburse, authorize, coverage, disease, void, insurance fund, radiation-related, radiation, cooperative, pledgee, confer, industrial insurance, workers' compensation, insurance coverage, provide coverage, contractor, transfer of property, failed to satisfy, de novo, common-law, conferred, claimant's, disabled, bailment

LexisNexis(TM) Headnotes

Workers' Compensation & SSDI > Coverage

[HN1] See Nev. Rev. Stat. § 616.395(1).

Workers' Compensation & SSDI > Coverage

[HN2] See Nev. Rev. Stat. § 616.395(3).

Securities Law > Blue Sky Laws > Excluded Transactions

[HN3] A "pledge" is a security interest in a chattel or in an intangible represented by an indispensable instrument, the interest being created by a bailment for the purpose of securing the payment of a debt or the performance of some other duty. The essential elements of a common-law pledge are: 1) the existence of a debt or obligation and 2) the transfer of property to the pledgee, to be held as security and, if necessary, to be used to assure performance of the obligation. The pledgee takes possession of the pledged property and

has a right to retain the property until the debt is satisfied.

Securities Law > Blue Sky Laws > Excluded Transactions

[HN4] A pledge requires a transfer of property and possession by the pledgee. The primary definition of "pledge" is a bailment or delivery of goods or property by way of security for a debt or engagement, or as security for the performance of an act. Under this definition, a transfer is required; a promise to reimburse is insufficient.

Workers' Compensation & SSDI > Administrative Proceedings

[HN5] The Nevada Industrial Commission's powers are limited to those powers enumerated in the Nevada Occupational Diseases Act and the Nevada Industrial Insurance Act. It has only those powers that the legislature has conferred on it expressly or by implication.

Governments > Courts > Judicial Precedents

[HN6] Although Attorney General opinions are not binding, they are entitled to great weight.

Governments > Legislation > Interpretation

Workers' Compensation & SSDI > Coverage

[HN7] Nevada courts construe the Nevada Industrial Insurance Act and the Nevada Occupational Disease Act broadly and liberally. These acts are to be construed to benefit injured workers and to protect employers from common-law tort actions.

Governments > Legislation > Interpretation

[HN8] A rule of liberal construction does not permit the reading into the act of something new and different than what the legislature saw fit to provide.

COUNSEL: Stewart L. Udall, Esq., Phoenix, Arizona, Larry C. Johns, Esq., Alan R. Johns, Esq., Johns & Johns, Las Vegas, Nevada, for Appellee.

J. Paul McGrath, Asst. Atty. General, Jeffrey Axelrad, Director, Torts Branch, Donald E. Jose, Asst. Director, Torts Branch, Washington, District of Columbia, John Thorndal, Esq., Thorndal, Backus & Maupin, Las Vegas, Nevada, for Appellant.

JUDGES: Duniway, Farris, and Pregerson, Circuit Judges.

OPINIONBY: FARRIS

OPINION: [*1389] FARRIS, Circuit Judge:

The question certified for this interlocutory appeal is whether an agreement between the Atomic Energy

Commission and the Nevada Industrial Commission is a valid device for providing workers' compensation coverage for radiation-related injuries and diseases for the employees of Reynolds Electrical and Engineering Company. The district court held that the agreement was not a valid device because it failed to meet the requirements of the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act. We affirm.

FACTS

The United States, through the Atomic Energy Commission [**2] and other agencies, has tested nuclear weapons and nuclear devices at the Nevada Test Site since the early 1950's. Reynolds Electrical and Engineering Company is a contractor at the Nevada Test Site. From 1961 to 1968, Reynolds employed Prescott as an operating engineer. Prescott alleges that he was exposed to radiation when he was regularly sent into highly contaminated test areas immediately after nuclear detonations to retrieve test instruments. In 1969, he was diagnosed as having multiple myeloma, a cancer of the bone marrow. Prescott brought tort actions against Reynolds and the United States, alleging that he contracted the disease as a result of exposure to radiation while employed at the Nevada Test Site.

[*1390] Reynolds and the Atomic Energy Commission had agreed that Reynolds would provide insurance coverage for its employees under the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act and would pass the insurance costs on to the United States. Although employers typically purchase such insurance by paying premiums to the state insurance fund, Reynolds has not paid any premiums to purchase insurance for employees who suffer radiation-related [**3] harm. Instead, in 1956, the Atomic Energy Commission and the Nevada Industrial Commission entered into an agreement which was intended to provide coverage for radiation-related diseases and injuries for employees of Reynolds and other contractors and subcontractors at the Nevada Test Site. The agreement provided that when an employee filed a claim, the Nevada Industrial Commission would determine if the claim was compensable under Nevada workers' compensation laws. If compensable, the Nevada Industrial Commission would make payments to the employee for injuries, disabilities or death resulting from work-related radiation exposure. The Atomic Energy Commission promised to reimburse the Nevada Industrial Commission for payments made to employees. This agreement has been extended and modified nine times since 1956, but the substance of the agreement remains unchanged. The Department of

Energy has since assumed the responsibilities of the Atomic Energy Commission.

In 1979, Prescott filed a claim with the Department of Energy. When no action was taken on the claim, Prescott sued Reynolds and the United States in tort. Reynolds and the United States moved to dismiss Prescott's suit, [**4] arguing that the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act provided his exclusive remedy. The district court held that the agreement between the Atomic Energy Commission and the Nevada Industrial Commission failed to satisfy the defendants' obligations to provide coverage under the acts. *Prescott v. United States*, 523 F. Supp. 918 (D. Nev. 1981). The district court held that the agreement was void because the Nevada Industrial Commission lacked authority to enter into the agreement and because the agreement impermissibly modified the terms of defendants' liabilities created by the Nevada Occupational Diseases Act. The court concluded that since no workers' compensation insurance had been purchased, Prescott could sue Reynolds and the United States in tort. On motion for reconsideration, the district court held that no premiums had been paid to purchase coverage for radiation-related diseases. *Prescott v. United States*, No. 80-143 (D. Nev. Mar. 28, 1983). The court again concluded that since Reynolds had not purchased insurance, Prescott could sue the defendants in tort. Pursuant to 28 U.S.C. § 1292(b), the district court certified for [**5] interlocutory appeal the question of the validity of the agreement between the Atomic Energy Commission and the Nevada Industrial Commission.

ANALYSIS

In determining the liability of Reynolds and the United States, the district court interpreted Nevada law. We recently granted rehearing en banc to decide whether a "clearly wrong" or a *de novo* standard applies when reviewing a district court's determination of the law of the state in which it sits. See *In re McLinn, F/V Fjord*, 721 F.2d 666 (9th Cir. rehearing en banc granted Dec. 6, 1983). Under either standard, we affirm.

PLEDGE OF ASSETS

The Nevada Industrial Insurance Act requires that employers pay to the state insurance fund premiums in the form of advance deposits. n1 It is undisputed that Reynolds did not contribute to the fund to cover the payment of benefits to employees [*1391] for work-related radiation injuries and diseases. Reynolds and the United States argue instead that the agreement between the Atomic Energy Commission and the Nevada Industrial Commission satisfied Reynolds' obligation under the Nevada Industrial Insurance Act.

Nev. Rev. Stat. § 616.395(3) permits the state industrial insurance [**6] system to accept as a substitute for premiums a "bond or pledge of assets." n2 The district court held that the agreement between the Atomic Energy Commission and the Nevada Industrial Commission is not a pledge of assets within the meaning of Nev. Rev. Stat. § 616.395(3).

----- Footnotes -----

n1 Nev. Rev. Stat. § 616.395(1) provides:[HN1]

Except for a self-insured employer, every employer within, and those electing to be governed by, the provisions of this chapter . . . shall pay to the state insurance fund, premiums in the form of an advance deposit as fixed by order of the manager [of the state industrial insurance system].

n2 Nev. Rev. Stat. § 616.395(3) provides:[HN2]

The system may accept as a substitute for payment of premiums either a bond or pledge of assets. The amount and sufficiency of security required, other than cash, must be determined by the manager [of the state industrial insurance system] but must not be of a value less than the amount of cash required by this section.

----- End Footnotes -----

[**7]

The Nevada Industrial Insurance Act does not define "pledge of assets." Nevada courts have not defined the term. The sparse legislative history provides no guidance. We must therefore look to other sources to determine whether the agreement qualifies as a "pledge of assets."

The Restatement defines [HN3]a "pledge" as "a security interest in a chattel or in an intangible represented by an indispensable instrument, the interest being created by a bailment for the purpose of securing the payment of a debt or the performance of some other duty." RESTATEMENT OF SECURITY § 1 (1941). The essential elements of a common-law pledge are: 1) the existence of a debt or obligation and 2) the transfer of property to the pledgee, to be held as security and, if necessary, to be used to assure performance of the obligation. See, e.g., *Madsen v. Prudential Federal Savings & Loan Ass'n.*, 558 P.2d 1337, 1339 (Utah 1977). The pledgee takes possession of the pledged property and has a right to retain the

property until the debt is satisfied. See *Ahlswede v. Schoneveld*, 87 Nev. 449, 488 P.2d 908, 910 (1971); *Campbell v. Peter*, 108 Utah 565, 162 P.2d 754, 755 (1945).

Reynolds and the government [**8]... argue that the term "pledge" can signify a promise. However, we reject their argument that the Nevada Legislature intended that a promise to reimburse would satisfy the "pledge of assets" requirement of Nev. Rev. Stat. § 616.395(3). That argument conflicts with the well established case law which provides that [HN4]a pledge requires a transfer of property and possession by the pledgor. See e.g., *Lincoln National Bank v. Herber*, 604 F.2d 1038, 1040 (7th Cir. 1979); *Madsen v. Prudential Federal Savings & Loan Ass'n*, *supra*. Additionally, the primary definition of "pledge" is a "bailment or delivery of goods or property by way of security for a debt or engagement, or as security for the performance of an act." BLACK'S LAW DICTIONARY 1038 (5th Ed. 1979). Under this definition, a transfer is required; a promise to reimburse is insufficient. The defendants have not presented any evidence to show that this primary definition of "pledge" was not the intended one. See *Maine v. Thiboutot*, 448 U.S. 1, 4, 8, 65 L. Ed. 2d 555, 100 S. Ct. 2502 (1980). Finally, the Nevada Industrial Insurance Act itself refers to the "amount and sufficiency of security" that an employer must provide. [**9] Nev. Rev. Stat. § 616.395(3) (emphasis supplied). This reference to "security" indicates that an employer is required to provide something more than a mere promise.

The government's promise to reimburse is at best a conditional promise. Article 4.c. of the agreement provides that "all reimbursements to the NIC by the AEC under this Article shall be subject to the availability of appropriations therefor." Thus, the Atomic Energy Commission expressly promised to reimburse the Nevada Industrial Commission only to the extent that money had been appropriated for that purpose.

Moreover, the procedures outlined in the agreement render such reimbursement contingent on several occurrences. [*1392] The agreement provides that the Atomic Energy Commission will reimburse the Nevada Industrial Commission only if the Atomic Energy Commission agrees that a claimant's award was justified. If it disagrees, the Atomic Energy Commission and the Nevada Industrial Commission may submit the dispute to arbitration. If the arbitrator rules that reimbursement is required, the agreement permits the Atomic Energy Commission to seek a *de novo* determination in a court of law. Thus, there are [**10] substantial barriers to the Atomic Energy

Commission's reimbursement of payments made by the Nevada Industrial Commission. The Nevada Legislature did not intend for this conditional promise to qualify as a "pledge of assets." We agree with the district court's conclusion that the agreement fails to satisfy the requirements of Nev. Rev. Stat. 616.395(3).

AUTHORITY TO ENTER INTO AGREEMENT

Reynolds and the government attempt to justify the failure to meet the statutory requirements by asserting that the Nevada Industrial Commission possessed extraordinary authority to enter into the agreement with the Atomic Energy Commission to provide coverage for employees. They argue that because of the difficulties of devising a manageable premium and rate structure, the agreement was a permissible alternative to the statutorily mandated method of providing coverage.

[HNS]The Nevada Industrial Commission's powers are limited to those powers enumerated in the Nevada Occupational Diseases Act and the Nevada Industrial Insurance Act. See *Andrews v. Nevada State Board of Cosmetology*, 86 Nev. 207, 467 P.2d 96 (1970). It has only those powers that the Nevada Legislature has conferred on it [**11] expressly or by implication. *Id.* In *Andrews*, the Nevada Supreme Court held that without a specific grant of power by the legislature, the Nevada State Board of Cosmetology could not issue subpoenas to require the attendance of witnesses at hearings. Here, the Nevada Legislature has not expressly conferred on the Nevada Industrial Commission the power to enter into a reimbursement agreement and no such power may be implied.

Reynolds cites *Nevada Industrial Commission v. Reese*, 93 Nev. 115, 560 P.2d 1352 (1977), for the proposition that the Nevada Industrial Commission has extremely broad authority when administering the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act. This reliance is misplaced. In *Reese*, a plurality of the Nevada Supreme Court held that the exercise of quasi-judicial powers by an Appeals Officer of the Nevada Industrial Commission did not violate the separation of powers doctrine. The plurality opinion addressed the question of separation of powers; it did not address the question of express or implied authority.

Reynolds also argues that Nev. Rev. Stat. § 616.223(2), which authorizes the Nevada Industrial Commission [**12] to enter into cooperative agreements with other public agencies, confers such power on the Commission. This provision is inapplicable. The title of Nev. Rev. Stat. § 616.223 is "Cooperative agreements to provide services to claimants and other

patients." As the title indicates, Nev. Rev. Stat. § 616.223(2) authorizes the Nevada Industrial Commission to enter into agreements to provide services and other assistance to disabled employees. It has no bearing on the Commission's authority to enter into an agreement to provide insurance coverage for employees.

The government argues that the agreement is merely a "form of rating system" authorized by Nev. Rev. Stat. § 616.380(1). Even if we were to accept the government's questionable characterization of the agreement, Nev. Rev. Stat. § 616.380(1) does not exempt employers from the statutory requirement of paying premiums or pledging assets under Nev. Rev. Stat. §§ 616.395(1) and (3). Nev. Rev. Stat. § 616.380(1) simply does not authorize the Nevada Industrial Commission to enter into the agreement.

[*1393] In holding that the Nevada Industrial Commission had no authority to enter into the agreement, the district court relied [**13] in part on Nevada Attorney General Opinions. In Op. Att'y Gen. No. 64-119 (1964), the Nevada Industrial Commission had sought to enter into a cooperative agreement with the Nevada State Board for Vocational Education to provide rehabilitation services for disabled workers. The Nevada Attorney General stated that the Commission had no authority to enter into the agreement because no provision of Chapter 616 of the Nevada Industrial Act delegated to the Commission the power to enter into agreements with other agencies for rehabilitation purposes. The Attorney General said, "It is a general rule that commissions and boards have only such powers as are specifically delegated to them by law or which may be reasonably implied therein." *Id.*

[HN6] Although Attorney General opinions are not binding, they are entitled to great weight. See Harris County Commissioners Court v. Moore, 420 U.S. 77, 87 n.10, 43 L. Ed. 2d 32, 95 S. Ct. 870 (1975); Moore v. Panish, 32 Cal. 3d 535, 544, 186 Cal. Rptr. 475, 480, 652 P.2d 32, 37 (1982). The present case is similar to the situation in Op. Att'y Gen. No. 64-119. Although the Nevada Industrial Insurance Act and the Nevada Occupational Diseases [**14] Act confer broad power on the Nevada Industrial Commission, they do not authorize the Commission to enter into a reimbursement agreement as a substitute for the payment of premiums or the pledge of assets. The defendants have cited no authority which confers such power upon the Commission. Because it lacked authority, the Nevada Industrial Commission's agreement with the Atomic Energy Commission is void. See Washington v. Penwell, 700 F.2d 570, 573 (9th Cir. 1983).

Reynolds and the government rely heavily on Op. Att'y Gen. No. 64-165 (1964). There, the Attorney General said that although no premiums to the state insurance fund had been paid for three years, the Nevada Industrial Commission could not refuse insurance coverage to members of the Eldorado Valley Advisory Group. The Nevada Legislature had required that the members be covered, determined how premiums would be paid, initially authorized appropriations for the payment of premiums, but later failed to appropriate funds for the continued payment of premiums. Faced with this unique situation, the Attorney General concluded that there was a "legislative mandate" for Board members to have continuous coverage notwithstanding [**15] the three year lapse in the payment of premiums. In the present case, no such legislative mandate may be inferred. The Nevada Legislature never authorized this type of agreement to serve as a permissible method of providing insurance coverage under the Nevada Industrial Insurance Act or Nevada Occupational Diseases Act.

The defendants' final argument is that the policies underlying the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act require us to find that the agreement is a permissible method of providing insurance coverage to employees. We recognize that [HN7] Nevada courts construe these acts broadly and liberally. See Antonini v. Hanna Industries, 94 Nev. 12, 573 P.2d 1184, 1186 (1978); Nevada Industrial Commission v. Bibb, 78 Nev. 377, 374 P.2d 531 (1962). These acts are to be construed to benefit injured workers, Nevada Industrial Commission v. Peck, 69 Nev. 1, 239 P.2d 244, 248 (1952), and to protect employers from common-law tort actions. Antonini v. Hanna Industries. Even under a broad and liberal reading, neither the Nevada Industrial Insurance Act nor the Nevada Occupational Diseases Act authorizes the Nevada Industrial Commission [**16] to enter into the agreement with the Atomic Energy Commission:[HN8]

[A] rule of liberal construction . . . does not permit the reading into the act of something new and different than what the Legislature saw fit to provide. We feel that the powers given the Industrial [*1394] Insurance Board as set forth in the statutes are exclusive. Op. Att'y Gen. No. 64-119(1964).

Prescott argues, and the district court held, that the agreement was void pursuant to Nev. Rev. Stat. § 617.190 as a device waiving the terms of liability of the Atomic Energy Commission and its contractors under the Nevada Occupational Diseases Act. Since we conclude that the agreement failed to satisfy the "pledge of assets" requirement and that the agreement

is void because the Nevada Industrial Commission lacked the authority to enter into the agreement, we need not reach this issue.

In holding that the agreement fails to meet the requirements of the Nevada Industrial Insurance Act and the Nevada Occupational Diseases Act, we express no opinion on the other issues addressed by the district court. [**17]

OF THE STATE OF CALIFORNIA

OFFICE: OFFICE OF THE ATTORNEY GENERAL

No. 88-308

1988 Cal. AG LEXIS 37; 71 Op. Atty Gen. Cal. 332

DECEMBER 7, 1988

CORE TERMS: ordinance, lease-purchase, school district, financed, grading, construction of school facilities, lease, site, constructed, drainage, financing, school facilities, exempt, governing board, regulating, onsite, local agencies, finance, local school, local regulation, involvement, school construction, indebtedness, school site, reconstruction, acquisition, regulation, consented, offsite, zoning

REQUEST BY: [*1]

JOHN K. VAN DE KAMP, Attorney General
(RONALD M. WEISKOPF, Deputy Attorney General)

OPINION: THE HONORABLE MARIAN BERGESON, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following questions:

1. Are school facilities financed pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Ed. Code, § 17700 et seq.) exempt from compliance with section 53097 of the Government Code?
2. If school facilities financed pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 are not exempt from compliance with section 53097 of the Government Code, is the cost of that compliance to be included in calculating the total cost of a project for the purpose of apportioning funds to finance it under the Law?

CONCLUSIONS

1. School facilities financed under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 are not exempt from compliance with section 53097 of the Government Code, i.e., construction of such facilities is subject to city or county ordinances regulating drainage or road improvements and conditions, and to city or county ordinances requiring the review and approval of grading plans as such relate to the design [*2] and construction of onsite facilities and improvements. In addition, when such facilities are constructed, consideration must be given to specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements.

2. The cost of compliance with the ordinances mentioned in section 53097 of the Government Code is properly included in determining the total cost of a

project when calculating the apportionment of funds to finance it under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

ANALYSIS

As a general rule neither the state nor its agencies is subject to local building or zoning regulations unless the Legislature has consented to such regulation. This Opinion answers whether the construction of school facilities under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 is subject to certain local ordinances that Government Code section 53097 says governing boards of school districts must comply with.

Examining the essentials of the Lease-Purchase Law and the Government Code section, we will conclude that the construction under the Law is subject to those ordinances. But first, by [*3] way of background, we explain the setting of the Law and the section and how their juxtaposition gives rise to the instant request.

A. The Lease-Purchase Law. "The usual method of funding new school construction in California has been for school districts to obtain voter approval for the issuance of general obligation bonds. (See Ed. Code, §§ 15100, 15124.)" (62 Ops. Cal. Atty. Gen. 209, 210.) The Leroy F. Green State School Building Lease-Purchase Law of 1976 (Stats. 1976, ch. 1010, § 2, p. 2850; Ed. Code, tit. 1, div. 1, pt. 10, ch. 22, § 17700 et seq.) provides an alternative way in which local school districts are able to obtain needed school facilities. n1 Basically its mechanism sees the "construction" of such facilities with state money, their ownership by the state, and their lease to local school districts. n2

n1 Except as context may otherwise indicate, unidentified section references in this opinion will refer to those sections of the Education Code that comprise the Leroy F. Greene State School Building Lease-Purchase Laws of 1976.

n2 In this opinion, as in the Leroy F. Greene State School Building Lease-Purchase Law, the term "construction" also includes the reconstruction, remodeling, and replacement of facilities. (§ 17702.1; cf., Ed. Code, § 39142.)

[*4]

One of the reasons why such leasing arrangements have proven "an effective alternate to general obligation bonds" (48 Ops.Cal.Atty.Gen. 110, 113 fn. 3 quoting Report, Assem. Int. Comm. on Municipal and County Government, 1 Assem. Jour. (1963)), is that without their method of financing, many projects would never be realized because of the constitutional proscription against school districts incurring an excess annual indebtedness over revenue without an appropriate vote of their electors. (Cal. Const. art. XVI, § 18 n3; see 56 Ops.Cal.Atty.Gen. 571, 575-577 (1973); 48 Ops.Cal.Atty.Gen. 110, supra.) There are also statutory limitations on the amount of immediate bonded indebtedness a school district can incur. (See e.g., Ed. Code, §§ 15102-15109.) However, with a bona fide "lease purchase" arrangement that "is entered into in good faith and creates no immediate indebtedness for the aggregate installments . . . but . . . confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished in that year, no violence is done to the constitutional provision. [Citations.]" (City of Los Angeles v. Offner (1942) 19 Cal.2d [*5] 483, 486 [option to purchase at the end of the lease]; accord, Dean v. Kuchel (1950) 35 Cal.2d 444, 447-448 [vesting of title at the end of the lease].) This is because the obligation incurred by the district is not classified as a liability "exceeding in any year the income and revenue provided for such year." (See Dean v. Kuchel, *supra*; City of Los Angeles v. Offner, *supra*; 56 Ops.Cal.Atty.Gen. 572, 575-577, *supra*; 48 Ops.Cal.Atty.Gen. 110, 110-113, *supra*.) Accordingly, a succession of cases and Opinions of this Office have upheld the propriety of such lease-purchase arrangements. (See authorities collected at 56 Ops.Cal.Atty.Gen. 572, 577, *supra*.)

n3 Section 18 of article XVI of the California Constitution currently provides:

"No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenues provided for such year, without the assent of two-thirds of the qualified electors thereof . . . , except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined . . . to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the qualified

electors of the public entity voting on the proposition at such election. . . ."

The purpose for the provision was to prevent the "snowballing" of accumulated debt carried into succeeding years. (McBean v. City of Fresno (1896) 112 Cal. 159, 164; 48 Ops.Cal.Atty.Gen. 110, 110, *supra*.)

[*6]

In the specifics of Leroy F. Greene State School Building Lease-Purchase Law financing, "[e]ach school district which desires to lease a [facility from the state] for a grade level maintained by it, . . . submit[s] through its governing board an application therefor [to the State Allocation Board]." (§ 11717; cf., § 11720.) On receiving an application to enter in to such a leasing arrangement, the State Allocation Board is authorized to undertake construction of the facility for the applicant district (§§ 17702(d), 17705(d), 17710, 17712) with funds from the State School Building Lease-Purchase Fund (§ 17708; cf., § 17711). "The Board may construct any project, and may acquire all property necessary therefor, on such terms and conditions as it may deem advisable" (§ 17710) and it "has full charge of the acquisition, construction, completion, and control of all projects authorized by them." (§ 17712.)

Upon completion of a project, the Board leases it to the district for a period of up to forty years (§§ 17705(e), 17730.2). During the term of the lease, title to all property acquired, constructed, or improved by the board remains with the state (§§ 17713, 17730) after which it "reverts" [*7] to the particular school district for which the project was undertaken (§ 17730.2). (See generally, 68 Ops.Cal.Atty.Gen. 329 (1985).)

B. Government Code Section 53097. As mentioned at the very outset, it is accepted as a general matter that neither the state nor its agencies is subject to local building or zoning regulations unless the Legislature consents to such regulation. (Cf. Hall v. City of Taft (1956) 47 Cal.2d 177, 183; City of Orange v. Valenti (1974) 37 Cal.App.3d 240, 244; Town of Atherton v. Superior Court (1958) 159 Cal.App.2d 417, 427; 68 Ops.Cal.Atty.Gen. 114, 118, 119 (1985); 56 Ops.Cal.Atty.Gen. 210, 211-212 (1973).) In a specially enacted article of the Government Code -- viz, article 5 (§§ 53090-53097) of chapter 1 of part 1 to title 5, in division 2; Stats. 1959, ch. 2110, p. 4907, § 1 [hereinafter, "article 5"] -- the Legislature has consented to a limited form of such regulation. (City of Orange v. Valenti, *supra*; 37 Cal.App.3d at 245.) It has provided that local agencies of the state for the local performance of governmental or proprietary functions

within limited boundaries, "shall comply with all applicable building [*8] ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." (Gov. Code, § 53091; cf. id., § 53090, subd. (a).)

School districts are such local agencies; they are agencies of the state for the local operation of the State school system. (City of Santa Clara v. Santa Clara Unified Sch. Dist. (1971) 22 Cal.App.3d 153, 158 & 158 fn. 3; Town of Atherton v. Superior Court, supra, 159 Cal.App.2d at 421; Hall v. City of Taft, supra, 47 Cal.2d at 181.) But the Legislature has traditionally treated them differently from other local agencies with respect to certain aspects of the operation of article 5, in part "because it was well aware that school construction was [already] subject to almost complete control by the state." (City of Santa Clara v. Santa Clara Unified Sch. Dist., supra.) Thus for example, while all local agencies are required to comply with city or county zoning ordinances (Gov. Code, § 53091, supra), under section 53094, the governing board of a school district could previously, by two-thirds vote, exempt itself from the purview of all such ordinances and render them inapplicable [*9] to a proposed use of property by the district, unless the use was for nonclassroom facilities. (Gov. Code, § 53094; cf., City of Santa Clara v. Santa Clara Unified Sch. Dist., supra at 158; see also id., § 53091 [school district need not comply with local building ordinances when acting under the State Contract Act, nor with local zoning ordinances unless they make provision for the location of public schools and unless the city or county planning commission has adopted a master plan].)

In 1984 however, the Legislature amended section 53094 and added a section 53097 to article 5, to specifically require that school districts comply with city or county ordinances regulating drainage, road improvement, and the approval of grading plans relating to the design and construction of onsite facilities. (Stats. 1984, ch. 657, §§ 1, 2, p. 2420.) With that amendment and addition, the Legislature removed a school district's option to exempt itself from the types of ordinances specified in newly enacted section 53097. That section, the subject of this opinion, provides as follows:

". . . the governing board of a school district shall comply with any city or county ordinance [*10] (1) regulating drainage improvements and conditions, (2) regulating road improvements and conditions, or (3) requiring the review and approval of grading plans as such ordinance provisions relate to the design and construction of onsite facilities and improvements." (Gov. Code, § 53097.)

The section also provides that school districts "shall give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements." (*Ibid.*) n4 The use of the word "shall" indicates that a mandatory obligation is imposed upon a district. (Gov. Code, § 14.)

n4 Section 53097 provides in full as follows:

"Notwithstanding any other provisions of this article [e.g., § 53094], the governing board of a school district shall comply with any city or county ordinance (1) regulating drainage improvements and conditions, (2) regulating road improvements and conditions, or (3) requiring the review and approval of grading plans as such ordinance provisions relate to the design and construction of onsite facilities and improvements, and shall give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements. If a school district elects not to comply with the requirements of city or county ordinances relating to the design and construction of offsite improvements, the city or county shall not be liable for any injuries or for any damage to property caused by the failure of the school district to comply with those ordinances."

"This section shall remain in effect only until January 1, 1991, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends such date."

[*11]

The scope of "projects" involving school facilities financed under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 is likely to involve the types of local ordinances with which the Legislature has specified in section 53097. The term "project" is defined in the Lease-Purchase Law to mean:

". . . 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." (§ 17702, subd. (d).)

However, because of the particular state involvement when school facilities are constructed under the Lease-Purchase Law, question arises whether section 53097 applies to the construction of such facilities. We are specifically asked whether that construction is exempt from the mandate of the section, i.e., whether it must comply with city and county ordinances relating to drainage and road improvements and conditions, or which require review [*12] and approval of grading plans for the design and construction of onsite facilities and improvements. We will conclude that such construction is not exempt from section 53097's mandate and must comply with the local ordinances mentioned therein. That being the case, we were also asked whether the cost of complying with those ordinances may properly be included in calculating the total cost of a project, as defined in subdivisions (b), (d), and (f) of section 17702, for the purpose of apportioning funds to finance it under the Lease-Purchase Law. We will conclude that the cost of compliance is properly included in that calculation.

1. Does The Mandate of Section 53097 Apply To School Facilities Financed Under The Leroy F. Greene State School Building Lease-Purchase Law of 1976?

As mentioned, section 53097 is a recent addition to article 5. (Stats. 1984, ch. 657, § 2.) In enacting it the Legislature made it clear that although school districts might generally exempt themselves from local zoning ordinances under section 53094, it wanted them nevertheless to comply with certain types of local ordinances mentioned in section 53097. (See e.g., Legis. Counsel's Dig., Sen. Bill [*13] No. 1681, 4 Stats. 1984 (Reg. Sess.) Summary Dig., p. 224.) Under the new section, a school district would now have to comply with city or county ordinances regulating drainage and road improvements, and the approval of grading plans relating to the design and construction of onsite facilities. Such ordinances are likely to be involved in the construction of school facilities financed under the Leroy F. Green State School Building Lease-Purchase Law, just as they would be in the case of the construction of school facilities that is otherwise financed.

In applying section 53097 to Lease-Purchase Law projects, we must determine whether the Legislature intended such application. (Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 256; Great Lakes Properties, Inc. v. City of El Segundo (1977) 19 Cal.3d 152, 163; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645.) There, as we have seen, question arises as to whether the Legislature intended to subject the construction of school facilities financed under the Leroy F. Green State School Building Lease-Purchase Law to the mandate of

section 53097 and the local ordinances of which [*14] it speaks. That is because the section is specifically directed to an undertaking of "the governing board of a school district," whereas when a project is financed under the Lease-Purchase Law, a state agency, the State Allocations Board "has full charge of the acquisition, construction, completion and control" of the project (§ 17712), title to the property is in the state (§ 17713) and the school district acts as "agent of the state" on the project (§ 17729). Accordingly, it has been suggested that these factors combine to make school construction projects under the Lease-Purchase Law projects of the state rather than those of the governing boards of local school districts, thus rendering Government Code section 53097 inapplicable to them.

As we now proceed to explain, we do not believe that the particular nature of the state's involvement in the construction of school facilities under the Leroy F. Green State School Building Lease-Purchase Law is such as to warrant a conclusion that the Legislature either intended to exempt such construction from the requirements of section 53097 or, more generally, to clothe the overall undertaking with the State's immunity from the type of [*15] local regulation found in the ordinances spoken of therein.

It is true that when school facilities are constructed under the Leroy F. Green State School Building Lease-Purchase Law, the State is involved in its sovereign capacity, acting through a state agency, the State Allocation Board. (§ 17704.) The process involves the Department of Education and the Department of General Services as well (§§ 17723, 17724, 17725) and interestingly, the role of those Departments in the construction of school facilities under the Lease-Purchase Law is the same as they play in the construction of school facilities that are financed otherwise. (§ 17723.)¹⁵ For example, in both situations, the Department of Education advises the governing boards of school districts on the acquisition of school sites, establishes standards for school buildings, and reviews and approves all plans and specifications for buildings (Ed. Code, § 39101; cf. id., § 39158) and the Department of General Services supervises the design and construction of school buildings and ensures that they are constructed according to approved plans (id., §§ 39140, 39143, 39144). (See generally, 56 Cal.Jur.3d, Schools, §§ [*16] 266-273.) The state is thus directly involved with the construction of school facilities financed outside of the Leroy F. Green State School Building Lease-Purchase Law but no suggestion is made that such construction is not subject to section 53097 because of that state involvement.

n5 Section 17723 provides:

"Nothing contained in this chapter [i.e., The Leroy F. Green State School Building Lease-Purchase Law] shall be construed as changing the powers and duties of the Department of Education or the Department of General Services in respect to school sites and the construction of school buildings as contained in Chapter 1 (commencing with Section 39000) and Chapter 2 (commencing with Section 39100) of Part 23 of Division 2 of Title 2 [of the Education Code]."

The predicate for state immunity from local regulation is founded, *inter alia*, on the notion that the state should be able to carry out its sovereign operations free of local interference unless it has otherwise consented. (See e.g., Hall v. City of Taft, *supra*, 47 Cal.2d 177, 184; 68 Ops.Cal.Atty.Gen. 114, 118-119, *supra*; 56 Ops.Cal.Atty.Gen. 210, 211-212, *supra*.) With the enactment of article 5 [*17] in 1959 the Legislature consented to a limited form of local regulation over local agencies which perform state functions (City of Orange v. Valenti, *supra*, 37 Cal.App.3d 240, 245) and with the enactment of Government Code section 53097 in 1984, it specifically required that school districts, which are local agencies of the state for the operation of the state school system, comply with those city or county ordinances mentioned therein. The requirement of the section is not contingent on the method of financing school construction and we do not see the real nature of the state's involvement in school construction under the Leroy F. Green State School Building Lease-Purchase Law as creating such contingency.

Every school district in this state must be under the control of a governing board, i.e., a "board of trustees or a board of education" (Ed. Code, § 35010) and when school districts act, "by statutory provision [they] act through [their governing] boards." (Gonzales v. State of California (1972) 29 Cal.App.3d 585, 590.) With the conventional construction of school facilities, the question of "where, when or how, if at all, a school district shall construct [*18] [a] school building[] is a matter within the sole competency of its governing board to determine." (People v. Oken (1958) 159 Cal.App.2d 456, 460.) The same is essentially true with the construction of a school facility under the Leroy F. Greene State School Building Lease-Purchase Law.

Under the Lease-Purchase Law, the State Allocation Board does not generate its own business; it responds instead to the needs, and acts at the behest of local school districts as expressed in applications submitted

through their governing boards, for the lease of a particular facility. (§§ 17708.5, 17717, 17717.5, 17720; cf. 68 Ops.Cal.Atty.Gen. 329, 330, *supra*.) As with the construction of school facilities generally, when they are constructed under the Leroy F. Green State School Building Lease-Purchase Law, it is the local district acting through its governing board which decides upon a facility, chooses its site, secures appraisals, and enters into contracts for its construction. (Compare §§ 17717, 17720 and 17729 with Ed. Code, §§ 35270, 39170, 81060.) Indeed, such role is mandated by the Lease-Purchase Law, section 17729 thereof providing:

"The [State Allocation Board] shall authorize [*19] the applicant school district to act as its agent in the performance of acts specifically approved by the board and all acts required pursuant to Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3. Such authorizations shall include, but are not limited to, the selection of school sites, the securing of appraisals, the contracting for architectural services, the advertisement of construction bids and the entering into of contracts therefor and the purchase of furniture and equipment."

Under the Lease-Purchase Law then, the governing board of a school district is the instigator of a project that will be constructed. It makes the decision regarding the facility to be built and it lets the contracts for the construction, albeit as an "agent" of the state. While actual title to a facility temporarily rests in the state for the term of a lease (§§ 17713, 11730.2), the reason for that is so the lease-purchase method of financing can be used. The state cannot lease a facility to a school district under the mechanism of the Law's lease-purchase financing, if it does not own the property. And from that we see why the district is designated as the state's [*20] "agent" in constructing a project; it is so designated because it is dealing with property title to which is temporarily in the state. n6

n6 The wording of section 17730.2 is worthy to note. It provides that

"Notwithstanding any other provision to the contrary, all lease agreements shall terminate 40 years from the date of execution and title to the property covered therein shall revert to the district as though full payment had been made." (Emphasis added.)

Under the Lease-Purchase Law a school district thus has a present vested reversionary interest in the property which it leases.

Except for these features of title and agency, which are inherent in a lease-purchase arrangement to make its financing possible, Lease-Purchase Law projects are much like district financed construction, and in both cases the governing boards of the respective school districts take all of the actions necessary for the construction of their facilities. The reality then of the construction of school facilities under the Leroy F. Greene State School Building Lease-Purchase Law, is one of school districts building needed facilities but using state funds and availing themselves of the lease-purchase [*21] mechanism to do so. There is nothing in the wording of section 53097 to suggest that it was not intended to apply to that activity of governing boards of local school districts, even though they act as "agent" of the state and title to the facilities constructed rests temporarily in the state, than to their constructing school facilities with traditional bond issue financing.

Under the Lease-Purchase Law the added essence of the state's involvement in the construction of school facilities, beyond that which it has with conventionally financed construction of those facilities, is basically financial. There is no reason why the method of financing school construction should affect the legislative intention regarding the application of the local ordinances spoken of in section 53097 to that construction.

For similar reasons, the realities of Lease-Purchase Law construction undercut the justification to clothe the activity with the state's immunity from local regulation. As we have seen, one of the reasons for according an activity of the state immunity from the type of local regulation as appears in the ordinances mentioned in section 53097, is the notion that the state should be [*22] able to carry out its sovereign operations free of local interference. Inasmuch as the construction of a school facility under the Lease-Purchase Law is essentially the undertaking of a local school district and not the state, the justification to accord it immunity from local regulation is not present. Then too, to the extent that the state is involved, its involvement is not such as would see its sovereign operations impaired if construction complies with the local ordinances spoken of in section 53097. In this vein we note that the Legislature has itself provided in section 17731 that when projects are undertaken under the Lease-Purchase Law, "[an] applicant district, acting as agent for the state, shall comply with all laws pertaining to the construction, reconstruction, or alteration of . . . school buildings." (§ 17731; emphasis added.) The ordinances spoken of in section 53097 would be such laws, and it thus appears that the Legislature has consented to their being applied to Lease-Purchase Law projects.

An examination of the circumstances prompting the enactment of section 53097 supports the view that the Legislature intended that construction of school facilities [*23] under the Leroy F. Green State School Building Lease-Purchase Law should comply with the local ordinances mentioned in the section.

The legislative history of section 53097 indicates that it was enacted in response to a situation which saw storm water runoff from a school site cause damage to surrounding properties. The runoff allegedly occurred because of faulty design and lack of adequate grading of the site, and it was contended that the incident would not have happened had the school district complied with local ordinances relating to design and grading. (See e.g., Assembly Local Government Committee, Comments on Sen. Bill No. 1681 (June 27, 1984), at p. 2; Senate Democratic Caucus, Summary of Legislation [SB 1681] (April 10, 1984), at p. 1; Senate Republican Caucus, Digest of SB 1681 (March 28, 1984), at p. 2.) Accordingly, section 53097 was enacted to ensure that school districts would comply with such local ordinances.

In analyzing the command of section 53097 our primary task of course has been to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (Friends of Mammoth v. Board of Supervisors, supra; 8 Cal.3d 247, [*24] 256; Great Lakes Properties, Inc. v. City of El Segundo, supra; 19 Cal.3d 152, 163; Select Base Materials v. Board of Equal., supra; 51 Cal.2d 640, 645.) While that was done initially by examining the words of the statute themselves (People v. Overstreet (1986) 42 Cal.3d 891, 895; People v. Craft (1986) 41 Cal.3d 554, 560; People v. Belletti (1979) 24 Cal.3d 879, 884; People v. Knowles (1950) 35 Cal.2d 175, 182) the words must be construed with the nature and purpose of the statute in mind, and toward that end "both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." (California Mfrs. Assn. v. Public Utilities Com. (1979) 24 Cal.3d 836, 844, citing Steilberg v. Lackner (1977) 69 Cal.App.3d 780, 785 and Alford v. Pierro (1972) 27 Cal.App.3d 682, 688; see also, Sand v. Superior Court (1983) 34 Cal.3d 567, 570.)

Examining the circumstances surrounding the enactment of section 53097 we have just seen how it was designed to ensure that school districts would comply with local drainage and [*25] grading ordinances to prevent a reoccurrence of the type of damage that had occurred from water runoff from a school site when a district had not complied with such local ordinances in constructing a facility. Where, as here, a statute is intended to address and ameliorate a

particular undesirable situation, that object must be considered and the words of the statute liberally construed to give it effect. (West Pico Furniture Co. v. Pacific Finance Loans (1970) 2 Cal.3d 594, 608; People v. Ventura Refining Co. (1928) 204 Cal. 286, 291; Rich v. State Board of Optometry (1965) 235 Cal.App.2d 591, 604; County of San Diego v. Milotz (1953) 119 Cal.App.2d Supp. 871, 881.)

So doing, we can see that it matters not to the runoff of rain water, whether the grading and drainage of a school site was accomplished with state or district funds. And the runoff of waters from a school site is not dependent on the niceties of title, or whether a school district acted as agent of the state in constructing it. The purpose of the statute, avoiding a recurrence of damage from water runoff from an improperly graded or drained school site, would require heed to local [*26] drainage and grading ordinances during construction in either case.

The construction of school facilities under the Leroy F. Green School Building Lease-Purchase Law is initiated by, and takes place at the direction of, the governing boards of local school districts. They are the real parties in interest in that construction. While the Legislature has treated school districts differently from other local agencies of the state with respect to their having to heed the strictures of local building and zoning ordinances, it has made it clear in section 53097 that when their governing boards act, they nonetheless have to comply with local ordinances regulating drainage or road improvements and conditions, and local ordinances requiring the review and approval of grading plans relating to the design and construction of onsite facilities and improvements. Such ordinances are likely to be involved when school facilities are constructed with Lease-Purchase Law financing.

Accordingly, we conclude that school facilities financed under the Leroy F. Greene School Building Lease-Purchase Law are not exempt from the requirement of section 53097 and complying with the types of local ordinances [*27] mentioned therein.

2. Is The Cost Of Compliance With The Types Of Ordinances Mentioned In Section 53097 To Be Included In The Total Project Costs Of A School Facility Financed Under The Leroy F. Greene State School Building Lease-Purchase Law?

In the event that we concluded that school facilities financed under the Leroy F. Greene State School Building Lease-Purchase Law had to comply with the city or county ordinances spoken of in section 53097 of the Government Code, we were asked whether the cost of compliance with such ordinances was properly

included in the total cost of the project, as defined in subdivisions (b), (d) and (f) of section 17702, when apportioning funds for it. We conclude that the cost of compliance is properly included in that calculation.

Under the Lease-Purchase Law, the State Allocation Board "apportions" funds from the State School Building Lease-Purchase Fund (§ 17708) or other sources (§ 17711) to finance the cost of a project approved by it for lease to an applicant school district. Subdivision (f) of section 17702 defines "apportionment" as

"... a reservation of funds necessary to finance the cost of any project approved by the board [*28] for lease to an applicant school district." (Emphasis added.)

For the purposes of the Law, the term "cost of project" is defined as including:

"... 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 remodeling of buildings, and the furnishing and equipping of them, the cost of plans, specifications, surveys, estimate of costs or such other expenses that are necessary or incidental to the financing of the project." (§ 17702, subd. (b); emphases added.)

And again, we have seen how the term "project" is defined for the purposes of the Leroy F. Greene State School Building Lease-Purchase Law as including, *inter alia*,

"... 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." (§ 17702, subd (d); emphases added.)

The construction of facilities and the grading and developing [*29] of sites and adjacent streets is thus an integral part of a project financed under the Lease-Purchase Law (§ 17702, subd. (d)), and the cost of such is specifically included within the "cost of a project" (id., subd. (b)) for which an apportionment of funds may be made by the board to finance it (id., subd. (f)).

In answer to the first question we concluded that the construction of school facilities financed under the Leroy F. Greene State School Building Lease-Purchase Law had to comply with local ordinances regulating

drainage or road improvements and conditions; and local ordinances requiring the review and approval of grading plans as such relate to the design and construction of onsite facilities and improvements. In addition, when such facilities are constructed, consideration must be given to specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements. The cost of complying with such ordinances is thus a necessary incident to a project undertaken pursuant to the Lease-Purchase Law. Such cost would legitimately fall within "the cost of developing the site and streets . . . immediately adjacent [*30] thereto" or "the cost of construction", and as such would be part of the total "cost of the project" (§ 17702, subd. (b)) for which appropriation under the Lease-Purchase Law can be made (id., subd. (f)) to finance it (ibid.).

We therefore conclude that the cost of having a project comply with the types of ordinances mentioned in section 53097 of the Government Code is properly included in the total cost of the project financed under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

TOWN OF A THERTON (a Corporation), Petitioner, v. SUPERIOR COURT OF SAN MATEO COUNTY,
Respondent; MENLO PARK SCHOOL DISTRICT, Real Party in Interest

Civ. No. 18064

Court of Appeal of California, First Appellate District, Division One

159 Cal. App. 2d 417; 324 P.2d 328; 1958 Cal. App. LEXIS 2015

April 17, 1958

SUBSEQUENT HISTORY: [***1]

A Petition for a Rehearing was Denied May 16, 1958.

PRIOR HISTORY: PROCEEDING in prohibition to restrain the Superior Court of San Mateo County from proceeding in an eminent domain action.

DISPOSITION: Writ denied.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner town, citing Cal. Gov't Code §§ 65800, 65806, brought a proceeding in prohibition to restrain respondent Superior Court of San Mateo County (California) from proceeding in an eminent domain action to acquire lands on behalf of real party in interest school district.

OVERVIEW: The town had adopted an interim zoning ordinance, pursuant to Cal. Gov't Code § 65806, and contended that adoption of the ordinance permitted it to prohibit any other than specific uses. The court denied the writ. The court noted that school districts were agencies of the state for the local operation of the state school system. The court determined that the state had occupied the field of school site location. The court stated that the comprehensive system of school control and operation by the school districts as shown in the statutes governing education was completely inconsistent with any power of a municipality to control the location of school sites. The court determined that under the statutory scheme, the state had in nowise ceded to the municipalities its sovereign right to locate school sites, but on the contrary had expressly granted the power of location to its agencies, the school districts.

OUTCOME: The court discharged the alternative writ and denied the town's petition for a peremptory writ prohibiting the superior court from proceeding with the eminent domain action on behalf of the school district.

CORE TERMS: municipality, site, ordinance, planning commission, zoning, school district, school site, regulation, zone, public schools, occupied, municipal, zoning ordinance, locate, school board, acquisition, governing board, public school, acquiring, acquire, acres, general plan, recommendation,

legislative body, hereinbefore, elementary, temporary, resident, interim, zoned

LexisNexis™ Headnotes

Real & Personal Property Law > Zoning & Land Use > Land Use Planning

[HN1] Cal. Gov't Code § 65806 provides that if the planning commission in good faith is conducting studies or holding hearings for the purpose of the adoption of any zoning ordinance or amendment thereto, the legislative body may adopt a temporary interim zoning ordinance prohibiting any purposes which might conflict with such ordinance.

Education Law > Departments of Education > State Departments of Education > Authority

[HN2] The public schools of California are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the constitution and the state legislature is given comprehensive powers in relation thereto. School districts are agencies of the state for the local operation of the state school system. The beneficial ownership of property of the public schools is in the state.

Governments > State & Territorial Governments > Relations With Governments

[HN3] The public school system is of statewide supervision and concern and legislative enactments thereon control over attempted regulation by local government units.

Education Law > Departments of Education > State Departments of Education > Authority

[HN4] The state has occupied the field of school site location.

Education Law > Departments of Education > State Departments of Education > Authority

[HN5] Cal. Educ. Code § 18402 provides: The State Department of Education shall establish standards for school sites.

Education Law > Departments of Education > State Departments of Education > Authority

[HN6] Cal. Educ. Code § 18403 provides that the governing board of a school district before acquiring property for a new school site or addition to a present school site shall give the planning commission having jurisdiction notice in writing of the proposed acquisition. The planning commission in 30 days is required to submit to the school board a written report of the investigation and its recommendations concerning acquisition of the site. The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report is received.

Governments > State & Territorial Governments > Relations With Governments

[HN7] Cal. Educ. Code § 18404 provides that a school district board and a city school board, if the latter desires to locate a school within two miles of an airport, must notify the State Department of Education of the proposed acquisition of a school site, and if the state department does not report favorably, the school board must wait 30 days before acquiring title to the property. This power of recommendation in the state department is inconsistent with the right of a local planning commission to designate by zoning the area where a public school may be located.

Governments > State & Territorial Governments > Relations With Governments

[HN8] Cal. Gov't Code § 65090 et seq. deal with the appointment and powers of a city planning commission. In ch. 3, art. 9, dealing with "Administration of Master or General Plan" appears Cal. Gov't Code § 65551, which provides that after the legislative body has adopted a master or general plan for the city no public ground or open space shall be acquired and no public building or structure shall be constructed or authorized in the area until its location, purpose and extent have been submitted to and reported upon by the planning commission. Cal. Gov't Code § 65552 provides that if the power to acquire such public ground or open space or public building or structure is vested in some governmental body, commission, or board other than the city council, then such body, commission or board shall submit to the planning commission its location, purpose and extent. Cal. Gov't Code § 65553 provides that the planning commission shall report its findings as to whether the proposed public improvement conforms to the adopted master or general plan. Cal. Gov't Code § 65554 provides: If the planning commission disapproves the proposed public improvement, its disapproval may be

overruled by such other governmental body, board, or agency. Such a power in the other government body is completely incompatible with a power in the municipality of zoning public schools.

Governments > Local Governments > Police Power

[HN9] Cal. Const. art. XI, § 11, the police power section, provides: Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws. A zoning ordinance falls within the classification of police measures.

Real & Personal Property Law > Zoning & Land Use > Zoning Generally

[HN10] Cal. Gov't Code § 65800 provides in part: Pursuant to the provisions of this chapter, the legislative body of any county or city by ordinance may: (a) Regulate the use of buildings, structures, and land as between agriculture, industry, business, residence and other purposes; (d) Create civic districts around civic centers, public parks, and public buildings and grounds for the purpose of enabling a planning commission to review all plans for buildings or structures within the district prior to the issuance of a building permit in order to assure an orderly development in the vicinity of such public sites and buildings. Cal. Gov't Code § 65801 provides: For such purposes the legislative body may divide a city, a county, or portions thereof into zones of the number, shape, and area it deems best suited to carry out the purpose of this chapter. Cal. Gov't Code § 65806 gives the city council authority to adopt as an emergency measure a temporary interim zoning ordinance to protect the public safety, health and welfare, which ordinance may prohibit such and any other uses which may be in conflict with such zoning ordinance.

Real & Personal Property Law > Zoning & Land Use > Land Use Planning

[HN11] Cal. Gov't Code § 65462 provides of what the master or general plan shall consist, including (a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, recreation, education, public buildings and grounds, and other categories of public and private uses of land. Cal. Gov't Code § 65470 provides: A master or general plan may include a public buildings element of the plan, showing locations and arrangements of civic and community centers, public schools, libraries, police and fire stations, and all other public buildings, including their architecture and the landscape treatment of their grounds.

Governments > State & Territorial Governments > Relations With Governments

[HN12] A city may not enact ordinances which conflict with general laws on statewide matters.

Governments > State & Territorial Governments > Relations With Governments

[HN13] The comprehensive system of school control and operation by the school districts as shown in the statutes is completely inconsistent with any power of a municipality to control the location of school sites.

Governments > State & Territorial Governments > Relations With Governments

[HN14] When it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, the state is not subject to local regulations unless the constitution says it is or the legislature has consented to such regulation. Cal. Const. art. XI, § 11 should not be considered as conferring such powers on local government agencies. Nor should Cal. Gov't Code §§ 38601, 38660, which confer on a city the power to regulate the construction of buildings within its limits, be so considered.

Education Law > Departments of Education > State Departments of Education > Authority

Governments > State & Territorial Governments > Relations With Governments

[HN15] Cal. Const. art. IX, § 5, art. IV, § 25(27), vest the legislature with the absolute power to establish the state school system. It is well settled that the school system of the state is a matter of general concern and not a municipal affair.

HEADNOTES: CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) **Schools--Legislative Control.** --The public schools are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution, and the Legislature is given comprehensive powers in relation thereto.

(2) **Id.--School Districts.** --School districts are agencies of the state for the local operation of the state school system.

(3) **Id.--School Property.** --The beneficial ownership of property of the public schools is in the state.

(4) **Id.--Legislative Control.** --The public school system is of statewide supervision and concern and

legislative enactments thereon control over attempted regulation by local government units.

(5) **Id.--School Property--Location of School Site.** --School site location by school districts is not subject to zoning ordinances of a municipal corporation in which the site is located, because the state has occupied the field by general laws (Ed. Code, §§ 18402-18404; Gov. Code, § 65551 et seq.) and such ordinances conflict with such laws.

(6) **Id.--School Property--Location of School Site.** --The Government Code provisions relating to the power of municipalities to regulate the use of buildings and land, to create civic districts around public buildings and grounds (§ 65800), to zone (§ 65801), and to adopt interim zoning ordinances (§ 65806), and relating to what the master plan shall include (§§ 65462, 65470) do not conflict with the statutes (Ed. Code, §§ 18402-18404; Gov. Code, § 65551 et seq.) that evidence occupation by the state of the field of determining the location of school sites within a municipality.

(7) **Id. -- School Property -- Location of School Site.** --The comprehensive system of school control and operation by the school districts, as shown by the provisions of the Education Code, is completely inconsistent with any power of a municipality to control the location of school sites.

(8) **Id.--School Property--Location of School Site.** --Since the location and acquisition of a school site is a sovereign activity of the state which has not been ceded to the municipalities, a municipality has no power to control the location of a school site within its borders by means of an interim zoning regulation.

COUNSEL: Winston Churchill Black for Petitioner.

No appearance for Respondent.

Keith C. Sorenson, District Attorney, and Howard E. Gawthrop, Deputy District Attorney, for Real Party in Interest.

Edmund G. Brown, Attorney General, and Richard H. Perry, Deputy Attorney General, as Amici Curiae on behalf of Real Party in Interest.

JUDGES: Bray, J. Peters, P. J., and Wood (Fred B.), J., concurred.

OPINIONBY: BRAY

OPINION: [*418] [**329] Petitioner seeks writ of prohibition to restrain the Superior Court of San Mateo County from proceeding in an action in eminent domain now pending in that court, numbered 76501, brought by Menlo Park School District * against certain parties, in which said respondent seeks to

condemn certain lands in said town of Atherton for school purposes. +

----- Footnotes -----

* Hereinafter referred to as respondent.

+ Argued and submitted with this proceeding is No. 1 Civil 18025, *Samuel Landi and Rose Landi v. Superior Court*. See post, p. 839 [324 P.2d 326] this day decided.

----- End Footnotes -----

[***2]

Questions Presented

Do the zoning ordinances of a municipality control the right of a school district in which the municipality is included, to designate the location of its schools? Corollary to this are the questions (a) Is a school district a state agency? (b) If so, has the state occupied the field of location of schools?

Facts

There is no conflict as to the facts. Included in Menlo Park School District are the incorporated cities of Atherton and Menlo Park as well as unincorporated territory. The district desires to acquire land in Atherton for public school purposes. Petitioner is a municipal corporation of the sixth class. June 24, 1957, the city council adopted ordinance Number 225, entitled "An Interim Zoning Ordinance Relating to Public Buildings and the Location Thereof Declaring its Urgency and Providing that it Shall Take Effect Immediately." In [*419] substance it prevents any property in the town of Atherton which is zoned for residential purposes from being used for any other purposes, specifically providing that no lands presently zoned residential may be used for the purpose of public buildings, including but not limited to schools. The ordinance was [***3] adopted pursuant to [HN1] section 65806, Government Code, which provides that if the planning commission in good faith is conducting studies or holding hearings for the purpose of the adoption of any zoning ordinance or amendment thereto, the legislative body may adopt a temporary interim zoning ordinance prohibiting any purposes which might conflict with such ordinance.

The same day the city council adopted a resolution proposing amendments to the town's zoning ordinance Number 146 as amended for the zoning of public buildings, including schools, and directing the planning commission to hold public hearings on the

proposed amendments to determine whether or not zoning districts should be established in which public buildings, including schools, may be located. The planning commission has employed a planning consultant for expert advice on land uses in the town, is now making pertinent studies, and has held public hearings. If valid, the ordinances would prohibit the school district from locating its school as proposed.

July 3, 1957, respondent commenced its eminent domain action, in which it seeks [**330] to condemn approximately nine acres within petitioner's corporate limits for [***4] school purposes, which property is zoned for residential uses only under petitioner's comprehensive zoning plan (ordinance Number 146 as amended). The condemnation is in direct violation of ordinance Number 225. The superior court in said action refused to grant petitioner's request for an order staying proceedings in said action. The petition alleges that the planning commission is proceeding "in good faith" as required by section 65806, Government Code; that Atherton was incorporated in 1923 for the express purpose of assuring a continuance of its area as, and its area still is, a low density, estate type, residential community consisting of 3,035 acres. It has no industrial or manufacturing plants or districts and no business district or business enterprises excepting two real estate offices and one gasoline service station existing as nonconforming uses. Atherton is primarily dependent for revenue to operate the municipality on real property taxes. Three different elementary school districts including respondent extend into the [*420] boundaries of Atherton and the portion of each in Atherton is much smaller than the outside portions. Approximately 7,000 persons live [***5] in Atherton. Registered as in attendance in schools within the town limits are 6,046 persons of whom 2,696 are in elementary grades. Only 1,640 of these persons reside in Atherton; 1,206 of these are in the elementary grades. Approximately 33 elementary students resident in Atherton cannot attend any public school in the town and are attending one in unincorporated territory. Seventy-four and sixty-one one-hundredths per cent of the land in Atherton is used for one family residences, 15 per cent for streets, 5.86 per cent for schools, 3.61 per cent for public utilities, fire protection and city hall, police and other municipal uses; .92 per cent for other uses. The major portion of respondent district lies in the city of Menlo Park. Menlo Park uses for school purposes only 1.5 per cent of its land as compared to the 5.86 per cent used in Atherton. A study by the American Institute for Planners, published jointly with the Federal Reserve Bank of Boston, for a city of the same size, type and kind as Atherton, shows that reasonable and proper zoning would require for school purposes only 1.31 per

cent of the total town area, or 39.76 acres as compared to Atherton's present 5.86 [***6] per cent or 177.77 acres. In addition to the nine acres sought to be condemned, petitioner is informed that respondent intends to acquire additional acreage in Atherton. Listing the present public and private schools, petitioner contends that Atherton has more schools per capita and more students in proportion to residents, than any other city in the United States. In the past five years there have been attempts to build four additional schools in Atherton. One elementary district whose boundary does not include any of the territory of Atherton, attempted to acquire property in Atherton for a school which no Atherton resident would have been permitted to attend. Attending school in Atherton with its population of only 7,000 are approximately 6,000 students while no community on either side of Atherton has students therein exceeding one for every five residents. Because of needed traffic control, public safety and police protection every school in Atherton has to receive the special attention of a police officer and because of the unreasonable number of schools there is an unreasonable burden on the police department and an unreasonable expenditure for the benefit of a majority [***7] of students who contribute nothing thereto.

In its answer in the eminent domain action, petitioner has set forth that plaintiff has not acquired the conditional use [*421] permit required by ordinance Number 146. The superior court denied petitioner's motion for a judgment on the pleadings based upon the ground that respondent's complaint was barred by the provisions of said two ordinances.

Does Petitioner's Zoning Ordinance Control?

Petitioner contends that the issue in this case is whether a municipality under section [**331] 65806, Government Code, has the power by an interim ordinance to prohibit any other than specific uses pending studies by the planning commission. It attempted to do this in ordinance Number 225. We are only concerned with the power of the municipality by such an ordinance to prohibit a school district from acquiring public school sites, and not to the application of the ordinance in general.

Petitioner concedes that the power of eminent domain is inherent in the State of California and may be exercised by the state, or any of its agencies to which the power is delegated, but contends that the delegation of the power to schools is limited by [***8] the powers which it contends the municipalities have by virtue of section 11, article XI, Constitution, and section 65800, Government Code.

In order to determine these questions we must consider the question of whether a municipality has the power to zone school sites, whether by an interim ordinance or otherwise. Therefore, we must determine if a school district is a state agency, and if so, whether the state has occupied the field in the matter of location of school sites.

(a) Is a School District a State Agency?

(1) This question has been flatly answered in the affirmative in Hall v. City of Taft, 47 Cal.2d 177 [302 P.2d 574]; [HN2]"The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given comprehensive powers in relation thereto. . . . (2) School districts are agencies of the state for the local operation of the state school system. [Citations.] (3) The beneficial ownership of property of the public schools is in the state." (Pp. 179, 181.)

(b) State has Occupied the Field.

(4) [HN3]"The public school system is of statewide [***9] supervision and concern and legislative enactments thereon control over attempted regulation by local government units. [Citations.]" (Hall v. City of Taft, *supra*, at p. 181.)

[*422] (5) Has the state occupied the field of school site location or has it expressly granted the power of school zoning to the municipalities? The answer is that [HN4] the state has occupied the field. Evidence of this is the following statutes:

[HNS] Section 18402, Education Code: "The State Department of Education shall establish standards for school sites." How can this be accomplished if a municipality may by zoning determine the location of such sites?

[HN6] Section 18403, Education Code, provides that the governing board of a school district before acquiring property for a new school site or addition to a present school site shall "give the planning commission having jurisdiction notice in writing of the proposed acquisition." The planning commission in 30 days is required to submit to the school board "a written report of the investigation and its recommendations concerning acquisition of the site." "The governing board shall not acquire title to the property until the report of the planning commission [***10] has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report is received." (Emphasis added.)

This shows that while the local planning commission may recommend concerning the location of a school site the ultimate determination of the site is in the school board.

[HN7]Section 18404 provides that a school district board and a city school board, if the latter desires to locate a school within two miles of an airport, must notify the State Department of Education of the proposed acquisition of a school site, and if the state department does not report favorably, the school board must wait 30 days before acquiring title to the property. This power of recommendation in the state department is inconsistent with the right of a local [**332] planning commission to designate by zoning the area where a public school may be located.

[HN8] Section 65090 et seq., Government Code, deal with the appointment and powers of a city planning commission. In chapter 3, article 9, dealing with "Administration. [***11] of Master or General Plan" appears section 65551, which provides that after the legislative body has adopted a master or general plan for the city no "public ground or open space" shall be acquired and "no public building or structure shall be constructed or authorized in the area" until its location, purpose and extent have been submitted to and reported upon by [*423] the planning commission. Section 65552 provides that if the power to acquire such "public ground or open space" or public building or structure is vested in "some governmental body, commission, or board" other than the city council, then such body, commission or board shall submit to the planning commission its location, purpose and extent.

Section 65553 provides that the planning commission shall report its findings as to whether the proposed public improvement conforms to the adopted master or general plan.

Section 65554 provides: "If the planning commission disapproves the proposed public improvement, its disapproval may be overruled by such other governmental body, board, or agency." (Emphasis added.) Such a power in the other government body is completely incompatible with a power in the municipality [**12] of zoning public schools.

Petitioner points out that a planning commission has no legislative function, but may only study, administer and recommend, whereas the city council has the sole power to zone. Therefore, says petitioner, section 65554 deals only with the planning commission and is not binding on the city council. This contention overlooks the fact that the section is dealing with a master plan which has already been adopted by the city council and in which the council has zoned an area for a public ground or building. While the council may

zone it, these sections provide that if the power to acquire such ground or building is in some other governmental body that body after reporting to the planning commission may entirely disregard the disapproval of the commission. There is no requirement that it then must go to the city council before it may acquire the property. "[Public] ground or open space," and "public building or structure," necessarily include public school grounds and buildings. Assuming that the city council under the statutes relied upon by petitioner, and hereafter discussed, in the first instance has the power to zone schools, it is clear that such [***13] zoning is merely advisory or recommendatory and that under section 65554 such zoning is not binding on the school district.

(6) Petitioner contends that Atherton's power to zone comes from [HN9]section 11, article XI, Constitution (the police power section): "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." "A zoning ordinance falls within the classification [*424] of police measures." (*Hurst v. City of Burlingame*, 207 Cal. 134, 138 [227 P. 308].) Petitioner concedes that under the qualification in the section, the Legislature has the power to grant to the school districts if they are state agencies the exclusive power of zoning school sites. Petitioner contends that the Legislature has not done so but on the other hand has done just the contrary and designated the municipalities as the body having the power to effect such zoning. Supporting its contention it cites the hereafter mentioned statutes which it contends control those above mentioned. [HN10] Section 65800, Government Code: "Pursuant to the provisions of this chapter, the legislative body of any [***14] county or city by ordinance may: (a) Regulate the use of buildings, structures, and land as between agriculture, industry, business, residence and other purposes. . . . (d) Create civic districts around civic centers, public parks, and public buildings and [**333] grounds for the purpose of enabling a planning commission to review all plans for buildings or structures within the district prior to the issuance of a building permit in order to assure an orderly development in the vicinity of such public sites and buildings." (Emphasis added.) Section 65801: "For such purposes the legislative body may divide a city, a county, or portions thereof into zones of the number, shape, and area it deems best suited to carry out the purpose of this chapter." Section 65806 gives the city council authority to adopt as an emergency measure a temporary interim zoning ordinance to protect the public safety, health and welfare, which ordinance may prohibit "such and any other uses which may be in conflict with such zoning ordinance." (Emphasis

added.) [HN11]Section 65462 provides of what the master or general plan shall consist, including "(a) A *land use* element which designates the proposed [***15] general distribution and general location and *extent of the uses* of the land for housing, business, industry, recreation, *education*, public buildings and grounds, and other categories of public and private uses of land." (Emphasis added.) Section 65470: "A master or general plan may include a public buildings element of the plan, showing *locations* and arrangements of civic and community centers, *public schools*, libraries, police and fire stations, and all other public buildings, including their architecture and the landscape treatment of their grounds." (Emphasis added.)

We see nothing in any of the above statutes which in any way conflicts with the statutes hereinbefore mentioned which we hold evidence the occupancy of the field by the state. The [*425] sections referred to by petitioner necessarily include broad general language in order to cover all the situations, purposes and property with which zoning must be concerned. The word "education" in section 65462 does not conflict with the power of a school district to locate its schools. It must be construed with statutes dealing with zoning and the rights of the state. It must be remembered that in all municipalities [***16] there are private schools, the location of which is purely a municipal matter. Hence the reason for the words "education" and the words "other uses" and "other purposes" appearing in the above statutes. As to the words "public schools" in section 65470, no master plan would be complete without showing on it the location of public schools already in existence. It may also show areas which the city recommends for future schools. The quoted words in nowise show that the Legislature intended by the use of these words to repeal the evident power given school districts expressly as state agencies to locate their schools. The statutes relied upon by petitioner include "public buildings." Petitioner concedes that the inclusion of those words in the statutes does not in any manner interfere with the right of the state to locate a state building, or of a county to locate a county building, in any portion of a municipality it desires, regardless of any attempt of the municipality to zone the location of such buildings. Yet if its contention is correct that by the inclusion of the words "education" and "public schools" in the above statutes the Legislature was relinquishing the field of [***17] school site location to the municipalities, it necessarily would be equally true that by the inclusion of "public buildings" the Legislature was also relinquishing the field of state and county building site locations.

Zahn v. Board of Public Works, 195 Cal. 497 [234 P. 388], deals with the power of the city of Los Angeles to zone to exclude stores from certain areas. Petitioner contends that the language (pp. 502-503) to the effect that a municipal zoning ordinance which regulates, restricts and segregates the location of "industries, the several classes of business . . . and the several classes of public and semi-public buildings" is a valid exercise of the police power, is a holding that Atherton has the power it claims here. Obviously, the court did not have in mind nor was it passing [**334] upon the question involved in our case. It was dealing solely with the power to zone business areas.

In Hall v. City of Taft, *supra*, 47 Cal.2d 177, the question was "whether a municipal corporation's building regulations [*426] are applicable to the construction of a public school building by a school district in the municipality." (P. 179.) Taft, like Atherton, [***18] is a city of the sixth class. Taft, as does petitioner here, relied on article XI, section 11 of the Constitution and contended that under the police power therein granted, it was given the power to adopt building regulations which would apply to school buildings within its boundaries, as the state had not occupied the field. After holding, as we have hereinbefore shown, that a school district is a state agency, the court went on to hold that the state had completely occupied the field and that the city's regulations concerning "the activity involved" (p. 184) conflicted with general laws. [HN12]"A city may not enact ordinances which conflict with general laws on statewide matters [citations]."

The Education Code sets out a complete system for providing necessary and adequate schools. In addition to the statutes hereinbefore discussed there are the following: Section 5021: "The Legislature hereby declares that it is in the interest of the State and of the people thereof for the State to aid school districts of the State in providing necessary and adequate school buildings for the pupils of the Public School System, such system being a matter of general concern inasmuch as the education [***19] of the children of the State is an obligation and function of the State." This language obviously includes the location of schools. Section 5041: "The Legislature hereby declares that it is in the interest of the State and of the people thereof for the State to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the Public School System, such system being a matter of general concern inasmuch as the education of the children of the State is an obligation and function of the State. . ." Section 5022 appropriates a sum of \$ 30,000,000 to be apportioned to school districts for "(1) The purchase and improvement of school building sites." Section

18102, subdivision (a), requires the board of education to "Advise with the governing board of each school district on the acquisition of new school sites, and after a review of available plots give the governing board of the district in writing a list of the approved locations in the order of their merit considering especially the matters of educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning [***20] commission having jurisdiction." While the department of education is thereby required to consider the master plan of a city, [*427] in approving a school site, the school district is not required to conform to the department's recommendations. Section 18404 hereinbefore discussed gives the local school board the power to disregard the department's recommendations as it only requires the board to delay for 30 days the acquiring of title to the property the board desires, if the department's recommendation is unfavorable. These sections, as was said in *Hall v. City of Taft, supra*, 47 Cal.2d 177, 188, concerning the building construction sections, "tend more to indicate that the school districts could follow such regulations [of the municipalities] as well as those of the state but are not bound to do so."

"The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse." (Ed. Code, § 18151) Section 18153 gives the school board the power to establish additional schools in the district. Section 18152 gives the school board, where any school is overcrowded, the power to locate the school in temporary [***21] quarters, without restriction as to its location.

(7) [HN13] The comprehensive system of school control and operation by the school districts [**335] as shown in the statutes herein discussed is completely inconsistent with any power of a municipality to control the location of school sites.

Hall v. City of Taft, supra, 47 Cal.2d 177, placed its decision that the construction of school buildings by school districts is not subject to building regulations of a municipality upon another ground than that the state has completely occupied the field by general laws and that such regulations interfere with those laws. * "... [HN14] When it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation. Section 11 of article XI of the state Constitution, *supra*, should not be considered as conferring such powers on local government agencies. Nor should the Government Code sections which confer on a city the power to

regulate the construction of buildings within [***22] its limits (see Gov. Code, §§ 38601, 38660) be so considered. ..." (P. 183.) As stated in the Hall case (p. 181): "The beneficial ownership of property of the public schools is in the state."

----- Footnotes -----

* The brief of the attorney general on behalf of Honorable Roy E. Simpson, Superintendent of Public Instruction and ex-officio Director of Education, as amicus curiae, stresses this ground.

----- End Footnotes -----

[*428] (8) If, as the Hall case holds, the construction and maintenance of a school building is a sovereign activity of the state, it is obvious that the location and acquisition of a school site is necessarily and equally such an activity. Obviously, too, neither the Constitution nor the Legislature has consented to a municipal regulation of school sites. As said in *Kentucky Institution for Education of Blind v. City of Louisville*, 123 Ky. 767 [97 S.W. 402, 8 L.R.A.N.S. 553], as quoted in the Hall case (p. 183): ""The principle is that the state when creating municipal governments does not cede to them any control of [***23] the state's property situated within them, nor over any property which the state has authorized another body or power to control. ... How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it cannot have.""

As said in *C. J. Kubach Co. v. McGuire*, 199 Cal. 215, 217 [248 P. 676]: "In the interpretation of a legislative enactment it is the general rule that the state and its agencies are not bound by general words limiting the rights and interests of its citizens unless such public authorities be included within the limitation expressly or by necessary implication."

Under the statutes, the state has in nowise ceded to the municipalities its sovereign right to locate school sites. On the contrary, the state has expressly granted the power of location to its agencies, the school districts.

[HN15] Article IX, section 5, and article IV, section 25, subdivision 27, of the Constitution vest the Legislature with the absolute power to establish the state school system. "It is well settled that the school system of the state is a matter of general concern and not a municipal affair. [***24] ..." (Becker v. Council of the City of Albany, 47 Cal.App.2d 702, 705 [118 P.2d 924].)

The fact that ordinance Number 225 is an interim ordinance intended to hold property in status quo under the period of study necessary to an ultimate determination of the city's master plan, does not give the city the power to prevent the district from exercising its right of eminent domain in acquiring a school site. As we have shown, the city has no right to zone against the district's right of location whether such zoning be intended to be temporary or permanent.

[**336] Petitioner contends that the action of the school board in bringing the eminent domain action and particularly in choosing the school site thereby sought to be acquired is arbitrary [*429] and constitutes an abuse of the discretion vested in the board. This question cannot be determined in prohibition. It is possibly a matter of defense to be determined in the condemnation action.

The alternative writ is discharged and the petition for a peremptory writ is denied.

CITY OF SANTA CLARA, Plaintiff and Respondent, v. SANTA CLARA UNIFIED SCHOOL DISTRICT et al.,
Defendants and Appellants

Civ. No. 28819

Court of Appeal of California, First Appellate District, Division Two

22 Cal. App. 3d 152; 99 Cal. Rptr. 212; 1971 Cal. App. LEXIS 1678

December 20, 1971

SUBSEQUENT HISTORY: [***1]

A petition for a rehearing was denied January 19, 1972, and respondent's petition for a hearing by the Supreme Court was denied February 16, 1972.

PRIOR HISTORY: Superior Court of Santa Clara County, No. 216587, George H. Barnett, Judge.

DISPOSITION: Since the record contains no evidence, as noted above, for the finding that the defendant school district acted arbitrarily and capriciously when it adopted Resolution No. 69-6, the judgment is reversed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellants, school district and associated individuals, challenged the judgment of the Superior Court of Santa Clara County (California) which held that appellants had acted arbitrarily and capriciously in adopting a resolution to construct a continuation high school on property located within appellee city, voided appellants' resolution, and enjoined further construction until there was full compliance with appellee's zoning ordinance.

OVERVIEW: Appellee city filed suit against appellants, school district and associated individuals, to enjoin the construction of a continuation high school that was authorized by appellants after they passed a resolution pursuant to Cal. Gov't Code §53094. The trial court held that appellants had acted arbitrarily and capriciously in passing the resolution, declared the resolution void and enjoined further construction of the school absent compliance with the local ordinance. Appellants challenged the trial court's decision. The court reversed the decision of the trial court and stated that the record sufficiently demonstrated that appellants had considered alternative sites for the school and had attempted to cooperate with appellee and the local ordinances to no avail. Accordingly, the court found that appellants had not acted arbitrarily or capriciously and that pursuant to Cal. Gov't Code §53094, they had the right to pass the resolution. The court found no merit to appellants' argument that Cal. Gov't Code §50391 authorized arbitrary denial of a use permit or denied public schools their due process rights.

OUTCOME: The court reversed the trial court's judgment and stated that there was no evidence that appellants, school and associated individuals, had acted arbitrarily and capriciously in adopting a resolution to construct a continuation high school. The court found that appellants properly exercised their right to exemption from local ordinances and that appellee city had the opportunity to inquire into appellants' criteria in selecting the site.

CORE TERMS: school district, site, use permit, zoning ordinance, high school, continuation, ordinance, public schools, exempt, arbitrary and capricious, governing board, zoning, constructed, zone, bid, acted arbitrarily, school site, capriciously, planning commission, voted, local agencies, evaluated, local agency, superintendent, local zoning, municipal, selecting, accorded, school construction, elementary school

LexisNexis(TM) Headnotes

Administrative Law > Separation & Delegation of Power > Constitutional Controls

Administrative Law > Separation & Delegation of Power > Jurisdiction

[HN1] Cal. Gov't Code §53090 provides that a local agency means any agency of the state for the local performance of governmental or proprietary function within limited boundaries; that it does not include the state, a city or a county.

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Local Governments > Ordinances & Regulations

[HN2] Cal. Gov't Code §53091 provides in part that each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated. Notwithstanding the preceding provisions of §53091, §53091 does not require a school district to comply with the zoning ordinances of a county or city unless such zoning ordinance makes provision for the

location of public schools and unless the city or county planning commission has adopted a master plan.

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

Governments > Local Governments > Ordinances & Regulations

Administrative Law > Judicial Review > Standards of Review

[HN3] Cal. Govt Code §53093 provides that a local agency aggrieved by the application of any zoning ordinance of a county or city or by the decision of an officer, department, board or bureau of the county or city made in connection with such ordinance may appeal to the local planning advisory committee and may thereafter obtain a review of the committee's decision in a court of competent jurisdiction. The section further provides that in lieu of an appeal to the local planning advisory committee, the aggrieved local agency may commence a superior court action seeking review of the act or determination of the county or city.

Administrative Law > Judicial Review

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Local Governments > Ordinances & Regulations

[HN4] Cal. Govt Code §53094 provides that notwithstanding any other provisions of this article, the governing board of a school district, by vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by such school district. If such governing board has taken such action the city or county may commence an action in the superior court seeking a review of such action of the governing board of the school district to determine whether it was arbitrary and capricious. If the court determines that such action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by such school district.

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Local Governments > Ordinances & Regulations

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review

[HN5] All local agencies are required to comply with city or county zoning ordinances (Cal. Gov't Code §53091), but that school districts are specifically authorized to exempt themselves from the purview of such ordinances by a two-thirds vote of their governing boards (Cal. Gov't Code §53094). The only reasonable interpretation of these sections is that a school district must abide by local zoning ordinances unless it chooses to exercise its right of exemption. The decision to render itself exempt is apparently one which the district may make at any time. Cal. Gov't Code §53094 contains no time limitation of any kind. Neither does §53094 limit a school district's discretion in any way except to provide that if the district's determination to exempt itself is arbitrary and capricious, it is subject to attack in the superior court.

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Local Governments > Ordinances & Regulations

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Review

[HN6] Although the selection of a school site by a school district involves an exercise of legislative and discretionary action and may not be challenged as to its wisdom, expediency or reasonableness, a school district must refrain from making such selection in an arbitrary and capricious manner.

SUMMARY: CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court entered judgment declaring null and void a school district's resolution declaring a city zoning ordinance inapplicable, as permitted by Gov. Code, § 53094, to its proposed construction of a continuation high school on a particular site. Construction of the school was permanently enjoined unless and until there should be full compliance with the city's zoning ordinance. The court found that Gov. Code, § 53094, was constitutional but that the school district had acted arbitrarily and capriciously in adopting its resolution pursuant thereto. (Superior Court of Santa Clara County, No. 216587, George H. Barnett, Judge.)

The Court of Appeal reversed the judgment, holding that the evidence did not support the trial court's finding of arbitrary and capricious action. In that connection, the court summarized evidence indicating the district board's extensive efforts to cooperate with the city prior to its passage of the resolution. It also noted that the city's denial of a use permit for the

construction was apparently based solely on a blanket disapproval of the concept of a continuation high school. No merit was found in the district's contention that it was not subject to the city zoning ordinance to begin with. (Opinion by Rouse, J., with Taylor, P. J., and Kane, J., concurring.)

HEADNOTES: CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to McKinney's Digest

(1) **Schools § 57—Buildings and Construction—Location of School Site.** —In an action by a city to enjoin a school district from constructing a continuation high school in an area zoned for residential use, the evidence did not support the trial court's finding that the district acted arbitrarily and capriciously in adopting a resolution rendering the city's zoning ordinance inapplicable to the proposed use of the property as permitted by Gov. Code, § 53094, where the district had selected the challenged site for the school only after it had evaluated several alternative sites, and only after it had evaluated the location of the property, the traffic conditions around the property, the proximity to an elementary school, available financing, recreational facilities, and planning considerations, where, following the city's denial of a use permit (apparently based solely on a blanket disapproval of the concept of a continuation high school), the district board met twice before adopting the resolution, the second meeting being for the specific purpose of hearing from those opposed to construction on the site chosen, and where the president of the board testified that the board thereafter adopted the resolution because it still believed that the property selected was the best available site for the school.

(2) **Schools § 57—Buildings and Construction—Location of School Site.** —It could not be said that a school district was exempted from compliance with a city's zoning ordinance under Gov. Code, § 53091, providing, in effect, that school districts need not comply with a city or county zoning ordinance unless it makes provision for the location of public schools, where, though the city ordinances required the obtaining of a use permit, it, in fact, permitted public schools to be constructed in R-1 zones as well as in less restrictive zones, and it contained a general welfare standard furnishing the criteria for determining whether to issue a use permit. Such an ordinance meets the requirements of due process and does not authorize the unbridled or arbitrary denial of a use permit.

COUNSEL: William M. Siegel, County Counsel, and Robert T. Owens, Deputy County Counsel, for Defendants and Appellants.

Edwin J. Moore, City Attorney, and M. Van Smith, Assistant City Attorney, for Plaintiff and Respondent.

JUDGES: Opinion by Rouse, J., with Taylor, P. J., and Kane, J., concurring.

OPINION BY: ROUSE

OPINION: [*154] [**213] This is an appeal by the Santa Clara Unified School District, the individual members of the board of trustees of said district and the superintendent of schools of said district from a judgment enjoining [**214] the construction of a continuation high school on certain property located within the City of Santa Clara.

The facts are without conflict and may be summarized as follows: The City of Santa Clara has at all [***2] times since July 1960 had a master plan which provides for the location of public schools within its boundaries. Ordinance No. 918, which was enacted by the city in February 1960, provides for the issuance of use permits authorizing the location of public schools within residential zones. The ordinance declares it to be unlawful and a public nuisance to locate a school within a residential zone without having first obtained a use permit.

The Santa Clara Unified School District, which was created in 1966, owns certain real property located within the City of Santa Clara. The property in question had originally been acquired by the Santa Clara Elementary School District in 1952, and the Scott Lane Elementary School had been constructed on a portion of the property in 1953. Ordinance No. 918 had not been enacted at that time, and there was no requirement that a use permit be obtained. The property was zoned for residential use at the time, and it continued to be zoned for residential use following the construction of the elementary school.

In April 1967, the Santa Clara Unified School District decided to construct a continuation high school on the unused portion of the district owned [***3] property on which the Scott Lane Elementary School had been constructed. The district reached this decision after considering and evaluating various alternative sites.

Preliminary plans and specifications were prepared, and they were approved by the State Division of Architecture in April 1968. Construction bids were advertised for, and in September 1968, it was determined that the low bid exceeded the estimated cost of construction. The district rejected this bid due to the lack of adequate funding. The plans and specifications were then reviewed and new bids were

called for. The new bids were to be opened on November 19, 1968.

After calling for the new bids, the district filed an application for a use permit with the City of Santa Clara. The district's initial application had no plans attached to it, and it was not accepted for filing. The district then filed a second application, in proper form, and on November 13, 1968, [*155] the city planning commission ruled that it would recommend approval of the use permit subject to certain conditions having to do with landscaping, construction and parking.

On November 19, the city council filed an appeal from the planning [***4] commission's decision.

On November 21, the time having arrived for the opening of the construction bids, the governing board of the school district held a special meeting and voted to award the construction contract to the Near Cal Corporation. The board was aware that the district's application for a use permit was to be reviewed by the city council. However, the board members felt that since the recommendation of the planning commission had been favorable, the city council would in all probability grant the use permit. The construction contract was signed on November 25, and construction commenced shortly thereafter.

On December 26, the governing board of the school district held another meeting. Lawrence Curtis, the superintendent of the school district, advised the board that the Near Cal Corporation felt that there was opposition to the construction of the proposed school and feared that litigation might be in the offing. The board was advised by the county counsel that it had the authority, under Government Code, section 53094, to render the city zoning ordinance inapplicable to the proposed school construction. However, the board decided that it wished to continue to [***5] cooperate fully with the city.

The district's use permit application had in the meantime been referred to the city's architectural control committee. Following [**215] the December 26 meeting, representatives of the school district met with this committee, and it was agreed that subject to certain modifications acceptable to both sides, the district would comply with the conditions imposed by the planning commission.

On December 30, the city council voted to deny the district's application for a use permit.

On January 2, 1969, a meeting of the governing board of the school district was held. The board members were informed of the city council's action. They were also provided by the county counsel with a resolution exercising their rights under Government Code, section

53094. The county counsel advised the board that if it wished to build the continuation high school on the site it had previously selected, he recommended that the board adopt the resolution. The board decided to take no action until it had held an open meeting on January 7, and had heard from those individuals [*156] who were opposed to the construction of the school on the site selected by the district. [***6]

At the January 7 meeting, the board explained to those attending the meeting the various factors which had been considered in selecting the site for the continuation high school. After hearing from those in opposition, the board voted to adopt Resolution No. 69-6 rendering the city zoning ordinance inapplicable under Government Code, section 53094. The president of the board testified that after listening to all of the views discussed at the meeting, she still believed that the board had selected the best available site for the continuation high school. Had she felt otherwise, she would have voted against the resolution.

Following the school district's adoption of Resolution No. 69-6, the City of Santa Clara commenced the instant action against the school district, the individual members of its governing board, the district's superintendent of schools and Near Cal Corporation. The city sought injunctive relief and judicial review of the school district's action, and it alleged that the proposed school construction was in violation of the city's zoning ordinance; that Government Code, section 53094, was unconstitutional; and that the school district had acted arbitrarily and capriciously [***7] in adopting Resolution No. 69-6.

The trial court held that Government Code, section 53094, was constitutional, but that the school district had acted arbitrarily and capriciously in adopting Resolution No. 69-6. Judgment was entered declaring Resolution No. 69-6 to be null and void and permanently enjoining construction of the continuation high school on the site selected by the school district unless and until there was full compliance with the city's zoning ordinance. The instant appeal followed.

The issues raised on this appeal turn upon the proper interpretation to be accorded to sections 53090 through 53095 of the Government Code. Prior to the enactment of these sections in 1959, our Supreme Court had held that public schools were a matter of statewide concern and that school districts, being local agencies of the state, were not subject to municipal construction regulations when engaged in such sovereign activities as the construction of school buildings. (*Hall v. City of Taft* (1956) 47 Cal.2d 177 [302 P.2d 574].) It was subsequently held that school districts were likewise exempt from municipal zoning ordinances and that the state had occupied the field of school [***8] site

selection by general laws contained in the Education and Government Codes. (*Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417 [324 P.2d 328].) The court in the *Atherton* case stated: "If, as the *Hall* case holds, the construction and maintenance of a school building is a sovereign activity of the state, it is obvious that [*157] the location and acquisition of a school site is necessarily and equally such an activity. Obviously, too, neither the Constitution nor the Legislature has consented to a municipal regulation of school sites." As said in *Kentucky Institution for Education of Blind v. City of Louisville*, 123 Ky. 767 [97 S.W. 402, 8 L.R.A.N.S. 553], as quoted in [*216] the *Hall* case (p. 183): "'The principle is that the state when creating municipal governments does not cede to them any control of the state's property situated within them; nor over any property which the state has authorized another body or power to control. . . . How can the city ever have a superior authority to the state over the latter's own property, or in its control or management? From the nature of things it cannot have.'" (P. 428.)

In 1959, [***9] the Legislature responded to these decisions by enacting Government Code, sections 53090 through 53095.

[HN1]Section 53090 provides in pertinent part that "[local] agency" means any agency of the state for the local performance of governmental or proprietary function within limited boundaries; that it does not include the state, a city or a county.

[HN2]Section 53091 provides in part that "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated."

Notwithstanding the preceding provisions of this section, this section does not require a school district to comply with the zoning ordinances of a county or city unless such zoning ordinance makes provision for the location of public schools and unless the city or county planning commission has adopted a master plan."

[HN3]Section 53093 provides that a local agency aggrieved by the application of any zoning ordinance of a county or city or by the decision of an officer, department, board or bureau of the county or city made in connection with such ordinance may appeal to the local planning advisory committee and may thereafter obtain [***10] a review of the committee's decision in a court of competent jurisdiction. The section further provides that in lieu of an appeal to the local planning advisory committee, the aggrieved local agency may commence a superior court action seeking review of the act or determination of the county or city. n1

----- Footnotes -----

n1 This section was repealed by the Legislature in 1970 (Stats. 1970, ch. 172, § 23).

----- End Footnotes -----

[HN4]Section 53094 provides that "Notwithstanding any other provisions of this article, the governing board of a school district, by vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by such school district. . . . If such governing [*158] board has taken such action the city or county may commence an action in the superior court . . . seeking a review of such action of the governing board of the school district to determine whether it was arbitrary and capricious. . . . If the court determines that such action was arbitrary and capricious, it shall [***11] declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by such school district." n2

----- Footnotes -----

n2 No attempt has been made to summarize in detail the provisions of sections 53092 or 53095, since they do not bear directly upon the issues raised on this appeal. Section 53092 authorizes the delegation of certain powers of the State Division of Architecture to the county or city. Section 53095 provides that sections 53090 through 53095 shall prevail over certain specified sections of the Education and Government Codes.

----- End Footnotes -----

When these sections are read as a whole, it is apparent that [HN5]all local agencies are required to comply with city or county zoning ordinances (Gov. Code, § 53091), but that school districts are specifically authorized to exempt themselves from the purview of such ordinances by a two-thirds vote of their governing boards (Gov. Code, § 53094). The only reasonable interpretation of these sections is that a school district must abide by local [***12] zoning ordinances unless it chooses to exercise its right of exemption. The decision to render itself exempt is apparently one which the district may make at any time. Section 53094 contains no time limitation of any kind. Neither

does that section limit a school district's discretion in any way except to provide that if the district's determination [**217] to exempt itself is arbitrary and capricious, it is subject to attack in the superior court. n3

----- Footnotes -----

n3 This construction of Government Code, sections 53090 through 53095, is entirely consistent with the Assembly Committee Report preceding their enactment. Thus, it appears that the Legislature deliberately accorded different treatment to school districts than to other local agencies because it was well aware that school construction was subject to almost complete control by the state. Sections 53090 through 53095 were primarily designed to insure that *other* local agencies which were not subject to such thorough control by the state could not claim exemption from city and county zoning requirements by virtue of the language contained in *Hall v. City of Taft, supra*. The Legislature accordingly provided in section 53094, that school districts, as opposed to other local agencies, should retain the right to exempt themselves from local zoning ordinances. (See Problems of Local Government Resulting from the *Hall v. City of Taft* Case Decision, 6 Assem. Interim Com. Report No. 8, Municipal and County Government (1959) p. 7, 1 Assem. J. Appendix (1959).)

----- End Footnotes -----

[***13]

It is apparent that a school district desiring to construct a new classroom facility within the limits of a particular city which has a master plan and a zoning ordinance providing for the location of public schools is faced from the very outset with several alternative courses of action. The school district might decide to exempt itself immediately and to make no attempt whatever to comply with local zoning ordinances. A second alternative is that the school district could elect total compliance with all zoning requirements, [*159] and, if it were denied the right to build on a particular site or were subjected to other requirements which it considered unreasonable, the district could avail itself of its right of appeal to the local planning advisory committee or could seek relief in the superior court. A third possibility is that the school district might choose

to comply with all city zoning requirements which were acceptable to it and might reserve its right to exempt itself when it was directed to comply with a condition which it deemed unreasonable.

(1) In the instant case, the only reasonable inference which can be drawn from the evidence is that defendant school district [***14] elected to cooperate with the city and to comply with all zoning requirements which it deemed reasonable. Representatives of the district met with the city's architectural control committee and reached an amicable compromise with regard to the conditions imposed by the planning commission. When the city council then denied the use permit and thereby flatly prohibited construction on the desired site, the district exempted itself from the city's zoning ordinance under Government Code, section 53094. It unquestionably possessed this right unless its decision can be deemed arbitrary and capricious.

In the instant case, the district's decision to exempt itself from the city zoning ordinance was made at a time when the city council had flatly prohibited construction of a continuation high school on the site previously selected by the school district. The situation was not one where the district was merely faced with a decision as to whether it was willing to comply with certain conditions imposed by the city. In fact, the district's decision whether to exempt itself from the zoning ordinance turned upon one question -- whether the district had selected an appropriate site for the [***15] continuation high school.

In his announcement of intended decision, the learned trial judge concludes that "the situation which has created the present dilemma arises from the fact that *a contract to construct the school was let and actual construction commenced prior to either the obtaining of a use permit or the determination not to be bound by the local ordinance.*" (Italics in original.)

It appears to this court that such conclusion is an oversimplification of the entire problem and does disservice to the overall efforts of the school district. The evidence shows that the school district originally selected the site for the continuation high school only after it had evaluated several [**218] alternative sites. Its decision was a reasoned and considered one, and it selected the Scott Lane Elementary School site only after it had evaluated [*160] the location of the property, the traffic conditions around the property, the proximity to an elementary school, available financing, recreational facilities and planning considerations.

The evidence bearing upon the city council's reasons for denying the district's application for a use permit suggests a far different approach [***16] to the

problem. The minutes of the meeting of December 30 when the council voted to deny the use permit, show that Mayor pro tem. Kiely relinquished the gavel in order to second the motion to deny the use permit. He then addressed the council, stating that he had previously taught in a continuation high school and knew that the students consisted of "dope peddlers, molesters, screwballs, thieves, knifers, et cetera." He believed that individuals of this type were a potential threat to the neighborhood and should not "be taken care of at the expense of other kids." He urged that the council not only overrule the planning commission and deny the use permit but that it take whatever legal action was necessary to prevent the continuation high school from being constructed at the site selected by the district.

There is no evidence that the city council gave any consideration to alternative sites or that its opposition to the district's choice of site was based upon anything other than a blanket disapproval of the concept of a continuation high school.

Following the denial of the use permit, the governing board of the school district met on January 2 and again on January 7. There is [***17] no evidence remotely suggesting that the district acted in a precipitous manner. The January 7 meeting was held for the specific purpose of hearing from those opposed to the construction of the continuation high school on the site chosen by the district. In addition to listening to their views, the district's governing board also took the opportunity to explain the various factors which had led to the selection of the Scott Lane Elementary School site. When the governing board then voted to render the city's zoning ordinance inapplicable, it obviously did so because it still believed that the Scott Lane Elementary School property was the best available site for the continuation high school. The president of the board so testified, and the record contains no evidence to the contrary.

It is obvious that the evidence above summarized furnishes no support for a finding that the adoption of Resolution No. 69-6 was either arbitrary or capricious.

Plaintiff city asserts that if it did fail to produce evidence of arbitrary and capricious conduct on the part of the school district, such failure was the fault of counsel for the school district. The city asserts, more specifically, that [***18] when its counsel sought to question the superintendent of the [*161] school district concerning the factors considered in selecting the site for the continuation high school, counsel for the school district objected and asserted that the only issue before the court was the propriety of the district's conduct in adopting Resolution No. 69-6. The city contends that under such circumstances, the school

district is bound by the doctrine of invited error and cannot object to the sufficiency of the evidence to support a finding of arbitrary and capricious conduct because such lack was the result of the improper exclusion of evidence at the district's instance. (Watenpaugh v. State Teachers' Retirement (1959) 51 Cal.2d 675, 680 [336 P.2d 165]; Gray v. Southern Pacific Co. (1944) 23 Cal.2d 632, 644 [145 P.2d 561].)

The record does show that counsel for the school district objected when the city's counsel sought to ask the superintendent of the district whether the board had taken ethnic factors into consideration when selecting the site for the continuation high school. However, the record also shows [**219] that the trial court overruled the objection when [***19] the city's counsel argued that the board's ultimate act of passing Resolution No. 69-6 would itself be arbitrary and capricious if the school site had been originally selected in an arbitrary and capricious manner. At subsequent stages in the trial, it is rather unclear which counsel took what position. Counsel for the city objected on three occasions when the school district's counsel inquired into the school site selection, but the court overruled the objections and stated that a substantial number of factors had to be considered in evaluating the district's decision to adopt Resolution No. 69-6. Both counsel ultimately asked a number of questions pertaining to the school site selection.

The record does reflect some confusion as to the relevance of evidence bearing upon the district's reasons for selecting the site for the continuation high school. However, it cannot be said that counsel for the school district prevented the city's counsel from inquiring into the subject. Both counsel were permitted to ask questions as to the various factors considered by the school district in choosing the site, and none of the evidence elicited was in the least suggestive of arbitrary or [***20] capricious conduct on the part of the school district. n4

- - - - - Footnotes - - - - -

n4 For purposes of retrial, it may be pointed out that the evidence in question was clearly relevant to the issues before the court. Although it is true that the city brought this action for the sole purpose of invalidating Resolution No. 69-6, it is apparent that the school district's conduct in adopting this resolution could not be evaluated without taking prior events into consideration. The district adopted the resolution because it believed that it had selected the best available site for the continuation high school and should

proceed with construction despite the city's opposition. [HN6] Although the selection of a school site by a school district involves an exercise of legislative and discretionary action and may not be challenged as to its wisdom, expediency or reasonableness, a school district must refrain from making such selection in an arbitrary and capricious manner. (*Arthur v. Oceanside-Carlsbad Junior College Dist.* (1963) 216 Cal.App.2d 656, 658 [31 Cal.Rptr. 177].) It is obvious that evidence showing that the school district acted arbitrarily and capriciously when it originally selected the site for the continuation high school would be highly relevant to the question of whether it likewise acted arbitrarily and capriciously when it made the determination to adhere to such selection and to exempt itself from local zoning requirements.

----- End Footnotes -----

[***21]

[*162] Another point urged by respondent City of Santa Clara appears worthy of comment. In referring to the provisions of section 53093 of the Government Code (since repealed by the Legislature), respondent suggests that appellant school district did not avail itself of the right of review provided for therein. While it is clear that school districts clearly qualified as "a local agency aggrieved" within the provisions of that section, yet it is significant to note that the method prescribed by section 53094 (and the one resorted to by appellant herein) is available *only* to school districts. Thus it seems reasonable to conclude that the Legislature, consistent with the philosophy set forth in *Hall v. City of Taft, supra*, 47 Cal.2d 177, and *Town of Atherton v. Superior Court, supra*, 159 Cal.App.2d 417, contemplated that school districts might prefer to deal with the problem under the authority of this section, rather than section 53093.

(2) One further point requires discussion for purposes of retrial. In addition to contending, quite correctly, that there was no evidentiary support for the finding that the adoption of Resolution No. 69-6 was arbitrary and [***22] capricious, defendant school district has also argued that the adoption of the resolution was an entirely unnecessary act on its part because it was never subject to the city's zoning ordinance to begin with. The school district bases this argument upon the language of Government Code, section 53091, to the effect that school districts need not comply with

[**220] a city or county zoning ordinance unless it "makes provision for the location of public schools . . ." The district contends that the city's zoning ordinance does not provide for the location of public schools because it imposes the requirement that a use permit must first be obtained and does not designate any particular zone in which public schools may be constructed without a use permit. The school district also argues that the city has discriminated against public schools in favor of private schools because the zoning ordinance does provide that private schools may be constructed in R-4 zones without a use permit.

The district's position is not meritorious. The question before us is not whether public or private schools are accorded identical treatment under the city's zoning ordinance but whether the ordinance [***23] provides for the location of public schools. The city correctly points out that public schools may [*163] be constructed in R-1 zones as well as in less restrictive zones whereas private schools may not. It is thus arguable that public schools are accorded more favorable treatment than private schools. Clearly, the ordinance does provide for the location of public schools, and the requirement that a use permit be obtained does not, as contended by the school district, give the city unlimited discretion to exclude public schools. The city's zoning ordinance contains a general welfare standard which furnishes the criteria for determining whether to issue a use permit. Such an ordinance meets the requirements of due process and does not authorize the unbridled or arbitrary denial of a use permit. (*Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 548-549 [84 Cal.Rptr. 443]; *Tustin Heights Assn. v. Bd. of Supervisors* (1959) 170 Cal.App.2d 619, 635 [339 P.2d 914].)

Since the record contains no evidence, as noted above, for the finding that the defendant school district acted arbitrarily and capriciously when it adopted Resolution No. 69-6, the [***24] judgment is reversed.

Westlaw.

12 Cal.Rptr.3d 343.

Page 1

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)**H****Briefs and Other Related Documents**

Supreme Court of California

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY et al., Plaintiffs and
Appellants,

John GARAMENDI, as Insurance Commissioner,
etc., et al., Defendants and
Respondents;
Southern Christian Leadership Conference of
Greater Los Angeles, Inc., et al.,
Intervenors and Respondents.

No. S102251.

April 26, 2004.
As Modified June 9, 2004.

Background: Insurer brought action against the Insurance Commissioner for a declaratory judgment that the regulation making insurers' community service statements available for public inspection was invalid. Civil rights and consumer groups intervened. The Superior Court, City and County of San Francisco, No. 308274, Ronald Evans Quidachay, J., entered summary judgment in favor of Commissioner and the groups. Insurer appealed. The Court of Appeal affirmed. Review was granted, superseding opinion of Court of Appeal.

Holdings: The Supreme Court, Brown, J., held that:

- (1) the regulation was valid, and
- (2) the information was subject to disclosure, even if the statements contained trade secrets.

Judgment of Court of Appeal affirmed.

Opinion, 112 Cal.Rptr.2d 574, superseded.

West Headnotes**[1] Records**

326k30 Most Cited Cases

Statute mandating public disclosure of insurance rates also encompassed other factors that might impermissibly affect availability of insurance, and thus Insurance Commissioner had statutory authority to promulgate regulation making insurers' community service statements available for public inspection, and such regulation was valid. West's Ann.Cal.Ins.Code §§ 1861.02, 1861.03, 1861.05, 1861.07; 10 CCR § 2646.6(c).

[2] Insurance

217k1070 Most Cited Cases

In reviewing the validity of an insurance regulation, Supreme Court's function was to inquire into the legality of the regulation, and not its wisdom.

[3] Insurance

217k1034 Most Cited Cases

[3] Insurance

217k1058 Most Cited Cases

The Insurance Commissioner has broad discretion to adopt rules and regulations as necessary to promote the public welfare.

[4] Insurance

217k1070 Most Cited Cases

In reviewing whether Insurance Commissioner had statutory authority to promulgate regulation, Supreme Court would conduct an independent examination, and determine whether, in enacting the specific rule, the Commissioner reasonably interpreted the legislative mandate.

[5] Insurance

217k1541 Most Cited Cases

[5] Records

12 Cal.Rptr.3d 343
 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
 (Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 2

326k30 Most Cited Cases

Statute mandating public disclosure of insurance rates and other factors that might impermissibly affect availability of insurance established absolute rule in favor of public disclosure, and other statutory exemptions from disclosure did not apply, and thus information contained in insurers' community service statements was subject to public disclosure, even if the statements contained trade secrets, as disclosure furthered statutory purpose of fostering consumer participation in rate-setting process. West's Ann.Cal.Evid.Code § 1060; West's Ann.Cal.Gov.Code § 6254; West's Ann.Cal.Ins.Code § 1861.07; 10 CCR § 2646.6(c).

See 6 Witkin, Summary of Cal. Law (9th ed. 1988). Torts, § 1114 et seq.; Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2004) ¶ 14:46.10 (CAINS Ch. 14-B).

[6] Statutes ☞181(1)
 361k181(1) Most Cited Cases

[6] Statutes ☞184
 361k184 Most Cited Cases

When construing a statute, court must ascertain the intent of the Legislature so as to effectuate the purpose of the law.

[7] Statutes ☞188
 361k188 Most Cited Cases

[7] Statutes ☞206
 361k206 Most Cited Cases

In determining legislative intent so as to construe statute to effectuate its purpose, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase, and sentence in pursuance of the legislative purpose.

[8] Statutes ☞184
 361k184 Most Cited Cases

[8] Statutes ☞206

361k206 Most Cited Cases

[8] Statutes ☞208
 361k208 Most Cited Cases

In construing a statute, a court does not consider the statutory language in isolation, but instead examines the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts.

[9] Statutes ☞223.1
 361k223.1 Most Cited Cases

Courts read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.

[10] Statutes ☞325
 361k325 Most Cited Cases

The rules of statutory construction apply equally in construing statutes enacted through the initiative process.

[11] Statutes ☞195
 361k195 Most Cited Cases

Under the rule of statutory construction, expressio unius est exclusio alterius, where exceptions to a general rule are specified by statute, other exceptions are not to be presumed unless a contrary legislative intent can be discerned.

***345 **72 *1034 Heller Ehrman White & McAuliffe, Paul Alexander, Vanessa Wells and Victoria Collman Brown, Menlo Park, for Plaintiffs and Appellants.

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12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 3

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***1035** Dennis J. Herrera, City Attorney (San Francisco), Owen J. Clements, Chief of Special Litigation, and Ellen M. Forman, Deputy City

Attorney, for City and County of San Francisco as Amicus Curiae on behalf of Intervenors and Respondents.

Harvey Rosenfield and Pamela Pressley for The Proposition 103 Enforcement Project as Amicus Curiae on behalf of Intervenors and Respondents.

BROWN, J.

In 1988, voters passed Proposition 103, which made "numerous fundamental changes in the regulation of automobile and other types of insurance." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 812, 258 Cal.Rptr. 161, 771 P.2d 1247 (*Calfarm*)). "Formerly, the so-called 'open competition' system of regulation had obtained, under which rates [were] set by insurers without prior or subsequent approval by the Insurance Commissioner" ***346(20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 240, 32 Cal.Rptr.2d 807, 878 P.2d 566 (20th Century)). Proposition 103 altered this system by adding to the Insurance Code article 10—"entitled 'Reduction and Control of Insurance Rates.' ([Ins.Code.] §§ 1861.01-1861.14.)" (*California Auto. Assigned Risk Plan v. Garamendi* (1991) 232 Cal.App.3d 904, 907, 283 Cal.Rptr. 562 (CAARP)). This new article required, among other things, approval by the Insurance Commissioner of the State of California (hereafter Commissioner) [FN1] for all insurance rate increases (see *id.* at pp. 909-910, 283 Cal.Rptr. 562), and "provide[d] for consumer participation in the administrative ratesetting process" (*Walker v. Allstate Indemnity Co.* (2000) 77 Cal.App.4th 750, 753, 92 Cal.Rptr.2d 132).

FN1. For convenience, we use "Commissioner" to refer to the Insurance Commissioner and/or the California Department of Insurance.

Pursuant, in part, to statutes enacted as part of Proposition 103, the Commissioner promulgated section 2646.6 of title 10 of California Code of Regulations (hereafter Regulation 2646.6). [FN2] Under Regulation 2646.6, subdivision (a), "[e]ach

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

insurer writing in excess of ten million dollars in" certain "lines of insurance ... [o]n or before March 1 of every year ... shall file a Community Service Statement ... with the Department of Insurance's Statistical Analysis Bureau in Los Angeles." The statement must contain specified statistical information concerning the insurer's business in the State of California, organized by ZIP code, including information described as *1036 "Record A data." [FN3] Record **74 A data consists of "the total earned exposures ***347 and total earned premiums, and the total number of exposures new, exposures canceled, and exposures non-renewed, stated separately" for each line of *1037 insurance and ZIP code. (Reg.2646.6, subd. (b)(1).) The statement, including the record A data, is subject to Insurance Code section 1861.07, pursuant to Regulation 2646.6, subdivision (c). And Insurance Code section 1861.07 provides that "[a]ll information provided to the commissioner pursuant to this article shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code shall not apply thereto."

FN2. This opinion addresses the pre-March 15, 2003, version of the regulation. Effective March 15, 2003, the Commissioner amended Regulation 2646.6. These amendments do not affect our construction of subdivision (c) of Regulation 2646.6--which did not materially change--and the related Insurance Code provisions.

FN3. "The insurer's Community Service Statement shall set forth, for the reporting period which shall consist of the calendar year ending on the immediately preceding December 31, for each Zone Identification Program ('ZIP') code in every county in California in which it sells insurance or maintains agents: [¶] (1) the total earned exposures and total earned premiums, and the total number of exposures new, exposures canceled and exposures non-renewed, stated separately for the following coverages: [¶] (A) private passenger automobile liability (excluding

policies issued through the California Automobile Assigned Risk Plan); [¶] (B) private passenger automobile physical damage; [¶] (C) homeowners multiple peril (excluding policies issued through the California FAIR plan); [¶] (D) commercial multiple peril, by ZIP code for the location of individual risks (excluding policies for which the annual premium is more than \$7,500); [¶] (E) commercial automobile liability (excluding policies issued through the California Automobile Assigned Risk Plan and excluding policies for which the annual premium is more than \$7,500); [¶] (F) commercial automobile physical damage (excluding policies for which the annual premium is more than \$7,500); [¶] (G) fire (excluding policies issued through the California FAIR Plan) (as specified in the Department of Insurance Statistical Plan, dated June 2, 1995); [¶] (H) liability other than automobile (excluding professional liability coverages and excluding all commercial policies for which the annual premium is more than \$7,500). [¶] (2) by service performed at each office, the number of offices maintained in the ZIP code during the reporting period; (For purposes of this section, 'service' means claims service, marketing or sales service.) Where more than one service is performed at an office, the insurer shall categorize the office based upon the service provided at that office. [¶] (3) the number of independent, employed or captive agents or agencies and the number of employed or independent claims adjusters maintaining offices (including home offices) in the ZIP code during the reporting period; [¶] To be counted for purposes of this section, an office must be open to the general public no fewer than 37.5 hours per week at least 50 weeks per year. A new office opened at any time during the reporting period shall be counted if it has been open at least 60 consecutive business days during the reporting period. An office closed at any time during the reporting period shall be counted unless it has been closed for more than 60 consecutive business days during

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 5

the reporting period. [¶] (4) for an insurer distributing through direct solicitation, the number of direct mail or telephone solicitations for new insurance business made during the reporting period to addresses in the ZIP code; [¶] (5) the number of agents and claims adjusters maintaining offices in the ZIP code during the reporting period who identified themselves as conversant in a language other than English, listed by language as specified in the Department of Insurance's Statistical Plan, dated June 2, 1995. [¶] (6) The race or national origin, and gender, of each applicant who is a natural person, as provided by the applicant on a separate, detachable form that refers to the application. The form shall state that this information is requested by the State of California in order to monitor the insurer's compliance with the law, that the applicant is not required to provide this information but is encouraged to do so, and that the insurer may not use this information for underwriting or rating purposes. A sample of this form shall be included in the Department of Insurance's Statistical Plan, dated June 2, 1995. No such information shall be used for purposes of underwriting or rating any applicant. [¶] For purposes of this section, race or national origin means one of the following: [¶] (A) American Indian or Alaskan Native [¶] (B) Asian or Pacific Islander [¶] (C) African-American [¶] (D) Latino [¶] (E) White [¶] (F) Other [¶] (G) Information not provided by applicant or policyholder. [¶] (7) The number of applications received for each line of insurance as listed in (b)(1) above. [¶] (8) The number of applications for which the insurer declined to provide each of the coverages listed in (b)(1) above." (Reg.2646.6, subd. (b).)

In this case, we consider the validity of the public inspection provision found in Regulation 2646.6, subdivision (c) and the scope of the public disclosure mandate of Insurance Code section 1861.07. We conclude that (1) the public inspection provision of Regulation 2646.6,

subdivision (c) is valid; and (2) Insurance Code section 1861.07 does not incorporate the exemption from disclosure found in Government Code section 6254, subdivision (k), and does not therefore exempt information protected by the trade secret privilege from disclosure.

I.

As required by Regulation 2646.6, State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company and State Farm General Insurance Company (collectively State Farm) filed a community service statement with the Commissioner in 1998. In a letter accompanying its statement, State Farm wrote: "STATE FARM INSURANCE COMPANIES CONSIDER[] THE INFORMATION CONTAINED IN RECORD A, B, AND C HEREIN AS PRIVILEGED AND CONFIDENTIAL. IT IS PROPRIETARY IN NATURE, CONSTITUTES TRADE SECRET MATERIAL, AND IS NOT TO BE DISSEMINATED BEYOND THE DESIGNATED RECIPIENTS WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE FARM INSURANCE COMPANIES."

Despite State Farm's invocation of the trade secret privilege, the Commissioner, without notifying State Farm beforehand, ***348, provided its community service statement to David "Birny" Birnbaum upon his request pursuant to Regulation 2646.6 and Insurance Code section 1861.03. After learning about this, State Farm sent a letter to the Commissioner, protesting the release of its trade **75 secrets to Birnbaum and asking the Commissioner to take all reasonable steps to retrieve this information. The Commissioner then sent a letter to Birnbaum stating that it had "inadvertently released" the information and asking him to return it. Birnbaum, however, refused to do so.

State Farm then filed this action against Birnbaum and the Commissioner, seeking declaratory and injunctive relief. In its complaint, State Farm alleged that "the information contained in the Community Service Statement is *1038 confidential and constitutes trade secrets belonging to State Farm" and is not subject to public inspection under Insurance Code section 1861.07. It sought, among

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 6

other things, the return of its trade secret information and an injunction barring Birnbaum from using or disclosing that information.

Soon thereafter, the Southern Christian Leadership Conference of Greater Los Angeles, Inc., and the Consumers Union of U.S., Inc. (collectively interveners), successfully intervened in the action. In their complaint, the interveners sought a declaration "that the Community Service Statement and data insurers file with the [Commissioner] ... are public records subject to public inspection and not exempt from public disclosure."

State Farm then amended its complaint. The amended complaint included the interveners and clarified that only the record A data was a trade secret. State Farm also added two declaratory relief claims. First, it sought "a declaration that 10 C.C.R. § 2646.6(c) is invalid to the extent that it purports to make Insurance Code § 1861.07 applicable to data submitted by State Farm pursuant to 10 C.C.R. § 2646.6, and purports to make data submitted in confidence by State Farm pursuant to 10 C.C.R. § 2646.6 publicly available." Second, it sought a "declaration that Insurance Code § 1861.07 does not abrogate trade secret rights; that trade secret protections apply to information submitted under Insurance Code § 1861.07; that State Farm's data submitted in Record A ... constitutes a trade secret; and that, if Insurance Code § 1861.07 applies to data submitted pursuant to 10 C.C.R. § 2646.6, State Farm's data submitted in Record A to each of its Community Service Statements must be held as confidential by the [Commissioner] and cannot be produced pursuant to a Public Records Act request."

After the trial court dismissed Birnbaum from the action, [FN4] both the Commissioner and the interveners moved for summary judgment. The court granted both motions. In granting the Commissioner's motion, the court held that the Commissioner "did not exceed [his] powers in enacting and implementing 10 CCR § 2646.6(c), and State Farm has not shown that there is an exception to the requirements of 10 CCR § 2646.6(c) and Insurance Code § 1861.07 for information which would otherwise be considered a trade secret." In granting the interveners' motion, the court held that (1) "there is no triable issue as to

any material fact; there is no showing by [State Farm] of economic value of the Record A data in the Community Service Statements, Cal. Regs.Code tit. 10, § 2646.6; and the Community Service ***349 Statements and Record A data are not a trade secret"; (2) "the California Department of Insurance did not exceed its powers in promulgating *1039Section 2646.6 of Title 10 of the California Code of Regulations to ensure that insurers do not unfairly discriminate against poor and ethnic communities"; and (3) "the Community Service Statements and data insurers file with the California Department of Insurance pursuant to Cal. Regs.Code tit. 10, § 2646.6 are public records subject to public inspection under Regulation § 2646.6(c) and Cal. Ins.Code § 1861.07 and are not exempt from public disclosure."

FN4. Birnbaum filed a motion to strike pursuant to Code of Civil Procedure section 425.16. The trial court granted the motion and entered judgment for Birnbaum. State Farm filed a notice of appeal, but later abandoned the appeal.

The Court of Appeal affirmed. [FN5] First, the court concluded that State Farm had standing to bring an action to prevent the Commissioner ***76 from disclosing its record A data. Second, the court held that the Commissioner did not exceed his statutory authority by making community service statements subject to the public disclosure mandate of Insurance Code section 1861.07. Third, the court found no trade secret exception to the public disclosure mandate of Insurance Code section 1861.07. According to the court, Insurance Code section 1861.07 declared a general rule requiring disclosure "without exceptions" and did not incorporate the exemption from disclosure for statutory privileges found in Government Code section 6254, subdivision (k). Thus, State Farm could not shield its record A data from public inspection by asserting the trade secret privilege codified in Evidence Code section 1060. Finally, the court held that, even if the trade secret privilege applied, it "still would not protect State Farm's record A claim." Relying on *Uribé v. Howie* (1971) 19 Cal.App.3d 194, 96 Cal.Rptr. 493, the court held that Evidence Code section 1060, even if

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984.
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

applicable, could not shield this data from disclosure because "the public interest is better served by disclosure ... than by nondisclosure." As a result, the court declined to consider State Farm's contention that there was a triable issue of fact as to whether its record A data is a trade secret.

FN5. Pending consideration of the appeal, the Court of Appeal "temporarily enjoined the Commissioner, the Department, and Intervenors from disclosing data, information, or potential trade secrets that State Farm provided under [Regulation] 2646.6, the record A data."

We granted review.

II.

[1] Before the Court of Appeal, State Farm contended the Commissioner exceeded his "statutory authority by making community service statements subject to the public disclosure mandate of Insurance Code section 1861.07 and that California Code of Regulations, title 10, section 2646.6, subdivision (c) [was] invalid to the extent that it purport[ed] to do so." According to State Farm, only information submitted pursuant to article 10 of chapter 9 of part 2 of division 1 of the Insurance Code (hereafter article 10) must be disclosed under Insurance Code section 1861.07, and community service statements do not contain such information. The court rejected this contention. Citing Insurance Code section 1861.03, [FN6] it concluded that "article 10 is not only about rates and ***350 rate regulation; it also concerns other factors that may impermissibly affect the availability of insurance." Thus, "[i]t was well within the authority of the Commissioner to conclude that requiring insurers to submit the information contained in those statements would facilitate his obligations to implement and enforce article 10." In a convoluted argument, State Farm now challenges this holding. We, however, find the public inspection provision of Regulation 2646.6, subdivision (c) to be valid.

FN6. As relevant here, Insurance Code

section 1861.03, subdivision (a) provides that "[t]he business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Sections 51 to 53, inclusive, of the Civil Code), and the antitrust and unfair business practices laws (Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) of Division 7 of the Business and Professions Code)."

[2][3][4] In reviewing the validity of a regulation, "[o]ur function is to inquire into the legality of the regulations, not their wisdom." (*Morris v. Williams* (1967) 67 Cal.2d 733, 737, 63 Cal.Rptr. 689, 433 P.2d 697.) The Commissioner "has broad discretion to adopt rules and regulations as necessary to promote the public welfare." (*Calfarm, supra*, 48 Cal.3d at p. 824, 258 Cal.Rptr. 161, 771 P.2d 1247.) Thus, our task "is limited to determining whether the regulation (1) is 'within the scope of the authority conferred' (Gov.Code, § 11373) and (2) is 'reasonably necessary to effectuate the purpose of the statute' (Gov.Code, § 11374)." (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 411, 128 Cal.Rptr. 183, 546 P.2d 687.) In this case, State Farm only challenges the authority of the Commissioner to enact the public inspection provision of Regulation 2646.6, subdivision (c). We must therefore conduct an independent examination. (see *20th Century, supra*, 8 Cal.4th at pp. 271-272, 32 Cal.Rptr.2d 807, 878 P.2d 566) and determine "whether in enacting the specific rule" the Commissioner "reasonably interpreted the legislative mandate" **77(*Fox v. San Francisco Residential Rent etc. Bd.* (1985) 169 Cal.App.3d 651, 656, 215 Cal.Rptr. 565).

The challenged portion of Regulation 2646.6, subdivision (c) provides that community service statements are subject to Insurance Code section 1861.07. As relevant here, Insurance Code section 1861.07 states that "all information" submitted to the Commissioner "pursuant to" article 10 "shall be available for public inspection...." Because all information provided pursuant to article 10—which encompasses Insurance Code sections 1861.01 to 1861.16—is subject to public disclosure under

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 8

Insurance Code section 1861.07, the validity of the regulation depends on whether the statutes in article 10 authorize the Commissioner to require community service statements.

*1041 In answering this question, we first find that Office of Administrative Law (OAL) opinions approving Regulation 2646.6 are irrelevant. "The approval of a regulation ... by the [OAL] ... shall not be considered by a court in any action for declaratory relief brought with respect to a regulation." (Gov.Code, § 11350, subd. (c), italics added; see also *Jimenez v. Honig* (1987) 188 Cal.App.3d 1034, 1040, fn. 4, 233 Cal.Rptr. 817 ["The courts are precluded from considering ... the opinion of the [Office of Administrative Law (OAL)] ... in reviewing the validity of the regulation".) Thus, we reject State Farm's claim that we are constrained by holdings of the OAL. As such, we may consider all the article 10 statutes cited as authority for the promulgation of Regulation 2646.6, subdivision (c)--i.e., Insurance Code sections 1861.02, 1861.03 and 1861.05--in determining the regulation's validity. (See Note, foll. Regulation 2646.6.)

Nor, contrary to State Farm's contention, did the Court of Appeal consider whether Insurance Code section 1861.03 actually incorporates provisions of the Unruh Act and other business laws. Rather, the court correctly observed that Insurance Code section 1861.03 made "the business of insurance subject to the state's ***351 antitrust and unfair business practice laws and to the Unruh Civil Rights Act." (See also *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 394, 6 Cal.Rptr.2d 487, 826 P.2d 730 [Ins.Code, § 1861.03 "merely modifies preexisting law, to provide, in essence, that insurers are subject to the unfair business practices laws in addition to preexisting regulations under the McBride Act, as amended"].) Based on the breadth of these business laws, the court then concluded that article 10 "encompasses more than rate matters and addresses other factors that may impermissibly affect the availability of insurance."

In doing so, the Court of Appeal correctly found that the Commissioner did not exceed his authority by promulgating the public inspection provision of Regulation 2646.6, subdivision (c). As part of Proposition 103, article 10's stated purpose was "

'to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.' " (Historical and Statutory Notes, 42A West's Ann. Ins.Code (1993 ed.) foll. § 1861.01, p. 649.) To this end, article 10 gives the Commissioner broad authority over insurance rates (CAARP, *supra*, 232 Cal.App.3d at pp. 913-914, 283 Cal.Rptr. 562), and expressly precludes him from approving rates that are "excessive, inadequate, unfairly discriminatory or otherwise in violation of" chapter 9 of the Insurance Code (Ins.Code, § 1861.05, subd. (a)). Through Insurance Code section 1861.03, subdivision (a), the article also subjects the business of insurance to laws prohibiting discriminatory and unfair business practices. Thus, article 10 is not limited in scope to rate regulation. It *1042 also addresses the underlying factors that may impermissibly affect rates charged by insurers and lead to insurance that is unfair, unavailable, and unaffordable.

As such, the Commissioner undoubtedly has the authority under article 10 to gather any information necessary for determining whether these factors are impermissibly affecting the fairness, availability, and affordability of insurance. This information necessarily includes statistical data relevant to the Commissioner's determination that a California community is underserved by the insurance **78 industry. (See Reg. 2646.6, subd. (c) [using information from community service statements, the Commissioner shall "issue the Commissioner's Report on Underserved Communities which will report those communities within California, designated by ZIP code, that the Commissioner finds to be underserved by the insurance industry"].) Therefore, the Commissioner reasonably concluded that community service statements fall within his legislative mandate under article 10. Accordingly, we conclude that the Commissioner did not exceed his statutory authority by promulgating Regulation 2646.6, subdivision (c), and subjecting these statements to the public disclosure mandate of Insurance Code section 1861.07.

III.

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 9

[5] Although the public inspection provision of Regulation 2646.6, subdivision (c) is a valid regulation, the scope of disclosure required by the regulation depends on the scope of disclosure required by Insurance Code section 1861.07. According to State Farm, Insurance Code section 1861.07, by expressly barring the application of the exemption from public disclosure codified in Government Code section 6254, subdivision (d), establishes that the rest of Government Code section 6254 applies. Specifically, State Farm contends ***352 Government Code section 6254, subdivision (k)--which exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege"--controls. Thus, trade secret information privileged under Evidence Code section 1060 should be exempt from public disclosure under Insurance Code section 1861.07. (See *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656, 230 Cal.Rptr. 362, 725 P.2d 470 [Gov.Code, § 6254, subd. (k) "merely incorporates other prohibitions established by law"].)

The interveners contend Insurance Code section 1861.07 establishes an absolute rule in favor of public disclosure, and its language barring the application of Government Code section 6254, subdivision (d) merely buttresses this rule. Thus, according to *1043 the interveners, neither Government Code section 6254, subdivision (k) nor Evidence Code section 1060 applies to a records request. As explained below, we agree with the interveners.

[6][7][8][9][10] "When construing a statute, we must ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977, 90 Cal.Rptr.2d 260, 987 P.2d 727, quoting *Dubois v. Workers Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387, 20 Cal.Rptr.2d 523, 853 P.2d 978.) "In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387, 241 Cal.Rptr. 67, 743 P.2d 1323.) At the same time,

"we do not consider ... statutory language in isolation." (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 578, 110 Cal.Rptr.2d 809, 28 P.3d 860.) Instead, we "examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts." (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1040, 130 Cal.Rptr.2d 672, 63 P.3d 228.) Moreover, we "read every statute "with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.'" "(*Calatayud v. State of California* (1998) 18 Cal.4th 1057, 1065, 77 Cal.Rptr.2d 202, 959 P.2d 360, quoting *People v. Pieters* (1991) 52 Cal.3d 894, 899, 276 Cal.Rptr. 918, 802 P.2d 420.) "These rules apply equally in construing statutes enacted through the initiative process." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196.).

We now apply these rules. Insurance Code section 1861.07 states: "All information provided to the commissioner pursuant to [article 10] shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and ***353 Section 1857.9 of the Insurance Code shall not apply." The first clause broadly requires public disclosure of "[a]ll information provided to the commissioner pursuant to" article 10--which, by definition, includes record A data. (Ins.Code, § 1861.07, italics added.) Thus, Insurance Code section 1861.07, on its face, subjects State Farm's record A data to public inspection.

*1044 The second clause of Insurance Code section 1861.07--which states that two specific statutory exemptions from disclosure do not apply--does not alter this conclusion. The statutes listed in the second clause--Government Code section 6254, ***353 subdivision (d) [FN7] and Insurance Code section 1857.9 [FN8]--SPECIFICALLY exempt from disclosure records relating to regulatory information provided by insurers to state agencies. Because the application of these exemptions would nullify the broad disclosure mandate of Insurance Code section 1861.07, the drafters of Proposition 103 presumably added the second clause to make clear that these exemptions do not apply. As such, this clause does not establish that the other statutory exemptions

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

from disclosure found in Government Code section 6254--such as section 6254, subdivision (k)--do apply. Indeed, the drafters' use of the inclusive term "all" to describe the information subject to public disclosure bolsters this construction of Insurance Code section 1861.07. (See *California Assn. of Dispensing Opticians v. Pearle Vision Center* (1983) 143 Cal.App.3d 419, 429, 191 Cal.Rptr. 762 [use of "inclusive terms such as 'in any form directly or indirectly' and 'or otherwise'" indicated that the listed items were not intended to be exclusive], disapproved on another ground in *Leach v. City of San Marcos* (1989) 213 Cal.App.3d 648, 661, 261 Cal.Rptr. 805; *Worthington v. Unemployment Ins. Appeals Bd.* (1976) 64 Cal.App.3d 384, 388, 134 Cal.Rptr. 507 ["The general expression ['any and all'] we deem not to be limited by the description of two common positions of persons engaged *1045 by others".] Thus, when viewed in context, the exemptions listed in Insurance Code section 1861.07 "are meant to be examples rather than an exhaustive listing of all those" statutory exemptions that are inapplicable. (*California Assn. of Dispensing Opticians*, at p. 429, 191 Cal.Rptr. 762.)

FN7. Government Code section 6254, subdivision (d) provides that: "Except as provided in Section 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: [¶] ... (d) Contained in or related to any of the following: [¶] (1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. [¶] (2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1). [¶] (3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1). [¶] (4) Information received in confidence by any state agency referred to in paragraph (1)."

FN8. Insurance Code section 1857.9 states in relevant part that "(a) An insurer doing business in this state, except as provided by subdivision (f), shall report the information specified by the commissioner that is collected by a licensed advisory organization on an annual basis for each class of insurance designated in the prior calendar year by the commissioner pursuant to subdivision (b) for policies issued or issued for delivery in California. The commissioner shall waive the requirements of this subdivision for any information that has been provided to the Insurance Services Office by the insurer, if the Insurance Services Office provides the information to the commissioner on or before the date on which the insurer is required to file the statement [¶] ... [¶]] (i) The information provided pursuant to subdivision (a) shall be confidential and not revealed by the department, except that the commissioner may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identified insurers or insureds."

Such a construction comports with the purpose behind Proposition 103. Proposition 103 was enacted to "ensure that insurance is fair, available, and affordable for all Californians." (*Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 564, 53 Cal.Rptr.2d 878.) To achieve this goal, the drafters established a public hearing process for reviewing insurance rate changes. (See Ins.Code, §§ 1861.05, 1861.055, 1861.08.) In doing so, the drafters sought to "enable ***354 consumers to permanently unite to fight against insurance abuse...." (Ballot Pamp., Gen. Elec. (Nov. 8, 1988) arguments in favor of Prop. 103, p. G88.) By giving the public ***80 access to all information provided to the Commissioner pursuant to article 10--which was enacted by Proposition 103--our construction of Insurance Code section 1861.07 is wholly consistent with Proposition 103's goal of fostering consumer participation in the rate-setting process.

Nonetheless, State Farm contends our rules of

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

statutory construction compel a contrary conclusion. According to State Farm, Insurance Code section 1861.07, by specifying that the exemption from disclosure found in Government Code section 6254, subdivision (d) does not apply, establishes that the rest of Government Code section 6254—including its other exemptions from disclosure, such as the exemption codified in subdivision (k)—does apply. Otherwise, the clause would be mere surplusage and serve no purpose, in direct contravention of our rules of statutory construction. (See, e.g., *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357, 19 Cal.Rptr.2d 882, 852 P.2d 377 ["An interpretation that renders statutory language a nullity is obviously to be avoided"].)

[¶1] State Farm also claims that the rule of statutory construction, *expressio unius est exclusio alterius*, establishes that the other exemptions from disclosure codified in Government Code section 6254 should apply. Under this rule, "where exceptions to a general rule are specified by statute, other exceptions are not to be presumed unless a contrary legislative intent can be discerned." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 116, 65 Cal.Rptr.2d 580, 939 P.2d 1280.) According to State Farm, the second clause of Insurance Code section 1861.07 creates an exception to the general rule—that records identified in Government Code section 6254 may be exempt from disclosure—for those records identified in subdivision (d). Thus, it contends no exception should be presumed for those records identified in any other part of Government Code section 6254, including subdivision (k). (See *Mountain Lion Foundation*, at p. 116, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

*1046 These rules of statutory construction do not, however, apply here. As explained above, the language of Insurance Code section 1861.07, when viewed in context, is not ambiguous and, by its terms, requires public disclosure of the record A data. (See *ante*, 12 Cal.Rptr.3d at pp. 352-354, 88 P.3d at pp. 79-80.) The rules cited by State Farm therefore "cannot perform [their] proper role of resolving an ambiguity in statutory language or uncertainty in legislative intent because here we encounter neither ambiguity nor uncertainty." (*Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 603, 68 Cal.Rptr.

297, 440 P.2d 497.) "In these circumstances there is no room for the proposed rule[s] of construction." (*Ibid.*) Indeed, we have long recognized that these rules do not control where, as here, the statutory language "may fairly comprehend many different objects, some of which are mentioned merely by way of example, without excluding others of similar nature." (*Estate of Banerjee* (1978) 21 Cal.3d 527, 539, fn. 10, 147 Cal.Rptr. 157, 580 P.2d 657.)

Finally, the fact that insurers may invoke the trade secret privilege in the public hearing process established by Proposition 103, pursuant to Insurance Code section 1861.08, does not dictate a different***355 result. [FN9] There is nothing anomalous about precluding insurers from invoking the trade secret privilege after they have already submitted trade secret information to the Commissioner pursuant to a regulation validly enacted under article 10 (see *ante*, 12 Cal.Rptr.3d at pp. 349-351, 88 P.3d at pp. 76-78), while permitting them to invoke the privilege in response to a request for information in a public rate hearing. Insurance Code section 1861.07 merely requires public disclosure of "information provided to the commissioner pursuant to" article 10. By definition, this information is **81 relevant to the Commissioner's mandate under article 10 to "ensure that insurance is fair, available, and affordable for all Californians." (Historical and Statutory Notes, 42A West's Ann. Ins.Code, *supra*, foll. § 1861.01, at p. 649.) Given that article 10 seeks to encourage public participation in the rate-setting process (see *ante*, at p. 16), precluding insurers from withholding trade secret information already provided to the Commissioner because of its relevance, under article 10 (see *ante*, at pp. 349-351, 88 P.3d at pp. 76-78) is certainly reasonable. [FN10] *1047 And such a conclusion does not render meaningless the insurers' power to invoke the trade secret privilege at the public rate hearing, because insurers may still prevent disclosure of trade secret information not already provided to the Commissioner pursuant to article 10.

FN9. Under Insurance Code section 1861.08, rate hearings are "conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of

12 Cal.Rptr.3d 343

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984
(Cite as: 32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343)

Page 12

Title 2 of the Government Code...." Because Government Code section 11513, subdivision (c) provides that "[t]he rules of privilege shall be in effect to the extent they are otherwise required by statute to be recognized at the hearing," the trade secret privilege codified in Evidence Code section 1060 applies in these hearings.

FN10. In reaching this conclusion, we decide only that information already provided to the Commissioner pursuant to a validly enacted regulation under article 10 is not protected by the trade secret privilege.

Accordingly, we conclude that Insurance Code section 1861.07 does not incorporate the exemption to disclosure found in Government Code section 6254, subdivision (k), and that trade secret information is therefore not exempt from disclosure. Because we find that State Farm may not invoke the trade secret privilege to prevent disclosure of its record A data under Insurance Code section 1861.07, we decline to address the other issues raised by State Farm. [FN11]

FN11. Specifically, we do not determine whether (1) a trade secret owner has standing to assert the trade secret privilege and prevent the Commissioner from disclosing its trade secret information pursuant to a records request under Insurance Code section 1861.07; (2) a trade secret owner has waived the trade secret privilege by submitting its trade secrets in its community service statements; and (3) the "injustice" exception to the trade secret privilege permits disclosure despite the privilege under the facts of this case.

BAXTER, WERDEGAR, CHIN, and MORENO, JJ.

32 Cal.4th 1029, 88 P.3d 71, 12 Cal.Rptr.3d 343, 4 Cal. Daily Op. Serv. 3571, 2004 Daily Journal D.A.R. 4984

Briefs and Other Related Documents (Back to top)

- 2004 WL 524838 (Appellate Brief) STATE FARM'S Supplemental Brief (Cal. Rule of Court 29.1(d)) (Jan. 30, 2004)Original Image of this Document (PDF)
- 2002 WL 1926034 (Appellate Brief) STATE FARM'S REPLY BRIEF ON THE MERITS TO INTERVENORS SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND CONSUMERS UNION OF U.S. (May. 22, 2002)
- 2002 WL 1926054 (Appellate Brief) STATE FARM'S REPLY TO RESPONDENTS CALIFORNIA INSURANCE COMMISSIONER AND CALIFORNIA DEPARTMENT OF INSURANCE (May. 21, 2002)
- 2002 WL 1926118 (Appellate Brief) BRIEF OF RESPONDENTS SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND CONSUMERS UNION (May. 02, 2002)
- 2002 WL 1926119 (Appellate Brief) BRIEF OF RESPONDENTS CALIFORNIA INSURANCE COMMISSIONER AND CALIFORNIA DEPARTMENT OF INSURANCE (May. 01, 2002)
- 2002 WL 985017 (Appellate Brief) PETITIONERS' OPENING BRIEF ON THE MERITS (Apr. 02, 2002)

END OF DOCUMENT

DISPOSITION

We affirm the judgment of the Court of Appeal.

WE CONCUR: GEORGE, C.J., KENNARD,

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Westlaw.

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 1

TOPANGA ASSOCIATION FOR A SCENIC
 COMMUNITY, Plaintiff and Appellant,
 v.
 COUNTY OF LOS ANGELES et al., Defendants
 and Respondents; JAMES WARREN BASSLER
 et al., Real Parties in Interest and Respondents

L.A. No. 30139.

Supreme Court of California

May 17, 1974.

SUMMARY

In administrative mandamus proceedings, the trial court refused to disturb a variance granted by a county agency permitting a mobile home park on about 28 acres of an area zoned for light agriculture and single family residences. (Superior Court of Los Angeles County, No. C-7268, Robert A. Wenke, Judge.)

The Supreme Court reversed and remanded the cause to the trial court with directions to issue a writ of mandamus requiring the county board of supervisors to vacate the order awarding a variance. The trial court was also directed to grant any further, appropriate relief. It was expressly held that regardless of the terms of a local zoning ordinance, the governing administrative agency, in adjudicating an application for a variance, must make findings such as will enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise the court of the basis of the agency's action. Also, it was held that as a prerequisite to sustaining a variance, the court must determine that substantial evidence supports the agency's findings and that they support the agency's decision. It was pointed out that Gov. Code, § 65906, outlining the circumstances under which a variance may be properly granted, emphasizes disparities between

properties, rather than the treatment of the subject property's characteristics in the abstract. The court noted that the agency's report focussed almost exclusively on the qualities of the subject property and failed to provide comparative information on the surrounding properties, with the result that the agency's summary of "factual *507 data," on which its decision apparently rested, did not include facts sufficient to satisfy the Government Code provision.

In Bank. (Opinion by Tobriner, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Zoning and Planning § 4--Variances--Findings. Regardless of whether the local zoning ordinance commands that the variance board set forth findings, that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis of the board's action.

(2) Zoning and Planning § 4--Variances--Judicial Review. Before sustaining a zoning variance, a reviewing court must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. And in making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.

(3) Zoning and Planning § 4--Variances--Administrative Mandamus. Code Civ. Proc., § 1094.5, governing judicial review of administrative agencies' adjudicatory decisions by mandamus, applies to the review of zoning variances awarded by bodies such as the Los

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11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 2

Angeles County Regional Planning Commission.

(4) Administrative Law § 139--Administrative Mandamus--Court's Duties.

Code Civ. Proc., § 1094.5, relating to administrative mandamus, contemplates that, at a minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision.

(5) Administrative Law § 143--Administrative Mandamus--Record of Administrative Proceeding.
 Implicit in Code Civ. Proc., § 1094.5, relating to administrative mandamus, is a requirement that the administrative agency which renders the challenged decision set forth findings *508 to bridge the analytic gap between the raw evidence and the ultimate decision or order.

[See Cal.Jur.2d, Zoning, § 209; Am.Jur., Zoning (1st ed § 225).]

(6) Zoning and Planning § 4--Findings--Contents.

Although a zoning variance board's findings need not be stated with the formality required in judicial proceedings, they must expose the board's mode of analysis to an extent sufficient to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action. (Not approving the language in *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.App.2d 626, 639 [35 Cal.Rptr. 354]; *Ames v. City of Pasadena* (1959) 167 Cal.App.2d 510, 516 [334 P.2d 653], which endorses the practice of setting forth findings solely in the language of the applicable legislation.)

(7) Zoning and Planning § 4--Granting of Variance as Quasi-judicial Administrative Function.

Although the adoption of zoning regulations is a legislative function, the granting of variances is a quasi-judicial, administrative function.

(8) Zoning and Planning § 6(1)--Contractual Nature of Zoning Scheme.

A zoning scheme is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted. The rationale is that such mutual restriction can

enhance total community welfare.

(9) Zoning and Planning § 4--Variances--Need for Compliance With All Legislative Requirements.

Inasmuch as a zoning variance may be sustained only if all applicable legislative requirements have been satisfied, the question whether a particular variance which had been granted by a county agency conformed to the criteria set forth in an applicable county ordinance became immaterial in the Supreme Court's administrative mandamus review of the variance once that court had concluded that the criteria set forth in Gov. Code, § 65906, for the granting of a variance had not been met.

(10) Zoning and Planning § 4--Variances--Statutory Criteria.

Gov. Code, § 65906, setting forth criteria for the granting of a zoning variance, emphasizes disparities between properties, not treatment of the subject property's *509 characteristics in the abstract, and contemplates that, at best, only a small fraction of any one zone can qualify for a variance.

(11) Zoning and Planning § 4--Variances--Applicant's Burdens.

Speculation about land neighboring on land for which a zoning variance is sought will not support the award of a variance. The party seeking the variance must shoulder the burden of demonstrating to the applicable agency that the subject property satisfies the requirements for the variance sought. Neither the agency nor the reviewing court may assume without evidentiary basis that the character of neighboring property is different from that of the property for which the variance is sought.

(12) Zoning and Planning § 4--Limitations on Granting of Variances.

Radical alteration of the nature of an entire zone is a proper subject for legislation but not for piecemeal adjudication by an administrative agency through the granting of variances for large parcels.

(13) Zoning and Planning § 4--Prohibition of Variance Granting "Special Privilege."

In the absence of an affirmative showing that a particular parcel in a certain zone differed substantially and in relevant aspects from other parcels therein, a variance granted with respect to

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 3

that parcel amounted to the kind of "special privilege" explicitly prohibited by Gov. Code, § 65906, establishing criteria for granting variances.

COUNSEL

Amdur, Bryson, Caplan & Morton and David L. Caplan for Plaintiff and Appellant.

John D. Maharg, County Counsel, Joe Ben Hudgens, John W. Whitsett and David H. Breier, Deputy County Counsel, for Defendants and Respondents.

Arnold J. Provisor for Real Parties in Interest.

TOBRINER, J.

We examine, in this case, aspects of the functions served by administrative agencies in the granting of zoning variances and of courts in reviewing these proceedings by means of administrative mandamus. We *510 conclude that variance boards like the ones involved in the present case must render findings to support their ultimate rulings. We also conclude that when called upon to scrutinize a grant of a variance, a reviewing court must determine whether substantial evidence supports the findings of the administrative board and whether the findings support the board's action. [FN1] We determine in the present case that the last of these requisites has not been fulfilled.

FN1 We recently held in *Strumsky v. San Diego County Employees Retirement Association* (1974) 11 Cal.3d 28 [112 Cal.Rptr. 805, 520 P.2d 29], that if the order or decision of a local administrative agency substantially affects a "fundamental vested right," a court to which a petition for a writ of mandamus has been addressed upon the ground that the evidence does not support the findings must exercise its independent judgment in reviewing the evidence and must find abuse of discretion if the weight of the evidence fails to support the findings. Petitioner does not suggest; nor do we find, that the present

case touches upon any fundamental vested right. (See generally *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144- 147 [93 Cal.Rptr. 234, 481 P.2d 242]; *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 103 [280 P.2d 1].)

The parties in this action dispute the future of approximately 28 acres in Topanga Canyon located in the Santa Barbara Mountains region of Los Angeles County. A county ordinance zones the property for light agriculture and single family residences; [FN2] it also prescribes a one-acre minimum lot size. Upon recommendation of its zoning board and despite the opposition of appellant-petitioner - an incorporated nonprofit organization composed of taxpayers and owners of real property in the canyon - the Los Angeles County Regional Planning Commission granted to the Topanga Canyon Investment Company a variance to establish a 93-space mobile home park on this acreage. [FN3] Petitioner appealed without success to the county board of supervisors, thereby exhausting its administrative remedies. Petitioner then sought relief by means of administrative mandamus, again unsuccessfully, in Los Angeles County Superior Court and the Court of Appeal for the Second District.

FN2 Los Angeles County Zoning Ordinance No. 7276.

FN3 Originally the real party in interest, the Topanga Canyon Investment Company has been replaced by a group of successor real parties in interest. We focus our analysis on the building plans of the original real party in interest since it was upon the basis of these plans that the zoning authorities granted the variance challenged by petitioner.

In reviewing the denial of mandamus below, we first consider the proper role of agency and reviewing court with respect to the grant of variances. We then apply the proper standard of review to the facts of the case in order to determine

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

whether we should sustain the action of the Los Angeles County Regional Planning Commission.
 *511

1. *An administrative grant of a variance must be accompanied by administrative findings. A court reviewing that grant must determine whether substantial evidence supports the findings and whether the findings support the conclusion that all applicable legislative requirements for a variance have been satisfied.*

A comprehensive zoning plan could affect owners of some parcels unfairly if no means were provided to permit flexibility. Accordingly, in an effort to achieve substantial parity and perhaps also in order to insulate zoning schemes from constitutional attack, [FN4] our Legislature laid a foundation for the granting of variances. Enacted in 1965, section 65906 of the Government Code establishes criteria for these grants; it provides: "Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification [¶] Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated." [FN5]

FN4 1 Appendix to Journal of the Senate (1970 Reg. Sess.) Final Report of the Joint Committee on Open Space Land (1970) pages 94-95; Bowden, *Article XVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 506. See *Metcalf v. County of Los Angeles* (1944) 24 Cal.2d 267, 270-271 [148 P.2d 645]; Gaylord, *Zoning: Variances, Exceptions, and Conditional Use Permits in California* (1958) 5 U.C.L.A. L.Rev. 179; Comment, *The General Welfare, Welfare Economics, and Zoning Variances* (1965) 38

So.Cal.L.Rev. 548, 573. See generally Note, *Administrative Discretion in Zoning* (1969) 82 Harv.L.Rev. 668, 671. The primary constitutional concern is that as applied to a particular land parcel, a zoning regulation might constitute a compensable "taking" of property.

FN5 A third paragraph added to section 65906 declares: "A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property." This paragraph serves to preclude "use" variances, but apparently does not prohibit so-called "bulk" variances, those which prescribe setbacks, building heights, and the like. The paragraph became effective on November 23, 1970, 19 days after the Los Angeles County Regional Planning Commission granted the variance here at issue. Petitioner does not contend that the paragraph is applicable to the present case.

Applicable to all zoning jurisdictions except chartered cities (Gov. Code, § 65803), section 65906 may be supplemented by harmonious local legislation. [FN6] We note that Los Angeles County has enacted an ordinance which, *512 if harmonious with section 65906, would govern the Topanga Canyon property here under consideration. Los Angeles County's Zoning Ordinance No. 1494, section 522, provides: [FN7] "An exception [variance] may ... be granted where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, and in the granting of such exception the spirit of the ordinance will be observed, public safety secured, and substantial justice done."

FN6 Government Code section 65800 declares that the code chapter of which section 65906 is a part is intended to provide minimum limitations within which counties and cities can exercise maximum control over local zoning matters. Article

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 5

XI, section 11 of the California Constitution declares that "[a]ny county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

FN7 This section recently was repealed but was in force when the zoning agencies rendered their decisions in the present case. For purposes of more succinct presentation, we refer in text to the section in the present tense.

Both state and local laws thus were designed to establish requirements which had to be satisfied before the Topanga Canyon Investment Company should have been granted its variance. Although the cases have held that substantial evidence must support the award of a variance in order to insure that such legislative requirements have been satisfied [FN8] (see, e.g., *Siller v. Board of Supervisors* (1962) 58 Cal.2d 479, 482 [25 Cal.Rptr. 73, 375 P.2d 41]; *Bradbeer v. England* (1951) 104 Cal.App.2d 704, 707 [232 P.2d 308]), they have failed to clarify whether the administrative agency must always set forth findings and have not illuminated the proper relationship between the evidence, findings, and ultimate agency action. [FN9]

FN8 The rule stated finds its source in authorities holding that all adjudicatory determinations of local agencies are entitled to no more than substantial evidence review. As indicated above (fn. 1, *ante*) those authorities no longer state the law with respect to adjudicatory determinations of such agencies which affect fundamental vested rights. Since no such right is involved in this case, however, the substantial evidence standard remains applicable. We note by way of caution, however, that merely because a case is said to involve a "variance" does not necessarily dictate a conclusion that no fundamental vested right is involved. The term "variance" is sometimes used, for

example, to refer to permits for nonconforming uses which predate a zoning scheme. (See Hagman, Larson, & Martin, *Cal. Zoning Practice* (Cont. Ed. Bar) pp. 383-384.)

FN9 For descriptions of the history of judicial action in this state with respect to zoning variance grants, see Bowden, *Article XVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 507-509; 1 Appendix to Journal of the Senate (1970 Reg. Sess.) Final Report of the Joint Committee on Open Space Land (1970) pages 95-98; Hagman, Larson, & Martin, *Cal. Zoning Practice*, *supra*, pages 287-291.

One of the first decisions to emphasize the importance of judicial scrutiny of the record in order to determine whether substantial evidence supported administrative findings that the property in question met the legislative variance requirements was that penned by Justice Molinari in *513 *Cow Hollow Improvement Club v. Board of Permit Appeals* (1966) 245 Cal.App.2d 160 [53 Cal.Rptr. 610]. Less than one year later, we followed the approach of that case in *Broadway, Laguna etc. Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767 [59 Cal.Rptr. 146, 427 P.2d 810], and ordered that a zoning board's grant of a variance be set aside because the party seeking the variance had failed to adduce sufficient evidence to support administrative findings that the evidence satisfied the requisites for a variance set forth in the same San Francisco ordinance.

Understandably, however, the impact of these opinions remained uncertain. The San Francisco ordinance applicable in *Cow Hollow* and *Broadway* explicitly required the zoning board to specify its subsidiary findings and ultimate conclusions; this circumstance raised the question whether a court should require findings and examine their sufficiency in a case in which the applicable local legislation did not explicitly command the administrative body to set forth findings. Indeed language in *Broadway* intimated that such a case was distinguishable. (*Broadway, Laguna etc. Assn.*

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 6

v. *Board of Permit Appeals, supra*, at pp. 772-773. See also *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 549 [84 Cal.Rptr. 443]. Cf. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 270 [104 Cal.Rptr. 761, 502 P.2d 1049].) Further, neither *Cow Hollow* nor *Broadway* confronted Government Code section 65906, since both cases concerned a chartered city. [FN10] There thus also remained uncertainty with respect to cases involving zoning jurisdictions other than chartered cities.

FN10 See page 511, *ante*.

Nevertheless, in an opinion subsequent to *Broadway*; *Hamilton v. Board of Supervisors* (1969) 269 Cal.App.2d 64 [75 Cal.Rptr. 106], a Court of Appeal set aside the grant of a variance by a planning commission under circumstances different from those in *Broadway* and *Cow Hollow*. The zoning jurisdiction involved in that controversy was a county, not a chartered city, and the court's opinion did not suggest that any applicable ordinance required administrative findings. Deeming Government Code section 65906 "concededly controlling," (*Hamilton v. Board of Supervisors, supra*, at p. 67), the court undertook the task of squaring the findings announced by the commission with the commission's grant of the variance and concluded that the findings were insufficient to sustain the variance.

(1) Consistent with the reasoning underlying these cases, we hold that *514 regardless of whether the local ordinance commands that the variance board set forth findings, [FN11] that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action. (2) We hold further that a reviewing court, before sustaining the grant of a variance, must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.

FN11 We note the apparent applicability of section 639 of the Los Angeles County Zoning Ordinance which was in effect at the time respondent granted the variance. That section provided: "After a hearing by a zoning board the said zoning board shall report to the commission its findings and recommend the action which it concludes the commission should take." As explained in text, however, we rest our ruling upon Code of Civil Procedure section 1094.5.

Our analysis begins with consideration of Code of Civil Procedure section 1094.5, the state's administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. (3) Without doubt, this provision applies to the review of variances awarded by bodies such as the Los Angeles County zoning agencies that participated in the present case. [FN12] (4) Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative *515 agency's findings and whether the findings support the agency's decision. Subdivision (b) of section 1094.5 prescribes that when petitioned for a writ of mandamus, a court's inquiry should extend, among other issues, to whether "there was any prejudicial abuse of discretion." Subdivision (b) then defines "abuse of discretion" to include instances in which the administrative order or decision "is not supported by the findings, or the findings are not supported by the evidence." (Italics added.) Subdivision (c) declares that "in all ... cases" (italics added) other than those in which the reviewing court is authorized by law to judge the evidence independently, [FN13] "abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (See *Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794, 798 [105 Cal.Rptr. 105].)

FN12 *Allen v. Humboldt County Board of Supervisors* (1963) 220 Cal.App.2d 877, 882 [34 Cal.Rptr. 232]. See also *Siller v. Board of Supervisors* (1962) 58 Cal.2d 479, 481 [25 Cal.Rptr. 73, 375 P.2d 41].

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 7

The California Judicial Council's report reflects a clear desire that section 1094.5 apply to all agencies, regardless of whether they are subject to the Administrative Procedure Act and regardless of their state or local character. (See Judicial Council of Cal., 10th Biennial Rep. (1944) pp. 26, 45. See also *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 101 [280 P.2d 1]; Deering, Cal. Administrative Mandamus (1966) p. 7.) "In the absence of compelling language in [a] statute to the contrary, it will be assumed that the Legislature adopted the proposed legislation with the intent and meaning expressed by the council in its report." (*Hohreiter v. Garrison* (1947) 81 Cal.App.2d 384, 397 [184 P.2d 323].)

Section 1094.5 makes administrative mandamus available for review of "any final administrative order or decision made as the result of a proceeding in which *by law* a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer." (Italics added.) Government Code section 65901 satisfies these requisites with respect to variances granted by jurisdictions other than chartered cities such as Los Angeles County's zoning agencies. Section 65901 provides, in part: "The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining such matters, and applications for variances from the terms of the zoning ordinance."

FN13 See footnote 1, *supra*.

(5) We further conclude that implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have

declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route. Reference, in section 1094.5, to the reviewing court's duty to compare the evidence and ultimate decision to "*the findings*" (italics added) we believe leaves no room for the conclusion that the Legislature would have been content to have a reviewing court speculate as to the administrative agency's basis for decision.

Our ruling in this regard finds support in persuasive policy considerations. (See generally 2 Davis, *Administrative Law Treatise* (1958) § 16.05, pp. 444-449; Forkosch, *A Treatise on Administrative Law* (1956) § 253, pp. 458-464.) According to Professor Kenneth Culp Davis, the requirement that administrative agencies set forth findings to support their adjudicatory decisions stems primarily from judge-made law (see, e.g., *Zieky v. Town Plan and Zon. Com'n of Town of Bloomfield* (1963) 151 Conn. 265 [196 A.2d 758]; *Stoll v. Gulf Oil Corp.* (1958) 79 Ohio L.Abs. 145 [155 N.E.2d 83]), and is "remarkably uniform in both federal and state" *516 courts. As stated by the United States Supreme Court, the "accepted ideal ... is that 'the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.' (*S.E.C. v. Chenery Corp.* (1943) 318 U.S. 80, 94)." (2 Davis, *supra*, § 16.01, pp. 435-436. See also *Saginaw Broadcasting Co. v. Federal C. Com'n* (1938) 96 F.2d 554, 559 [68 App.D.C. 282].)

Among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions. (See 2 Cooper, *State Administrative Law* (1965) pp. 467-468; Feller, *Prospectus for the Further Study of Federal Administrative Law* (1938) 47 Yale L.J. 647, 666. Cf. Comment,

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 8

Judicial Control Over Zoning Boards of Appeal: Suggestions for Reform (1965) 12 U.C.L.A. L.Rev. 937, 952.) [FN14] In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis. (See *California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 274 [28 Cal.Rptr. 868, 379 P.2d 324]; *Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 871 [206 P.2d 355].)

FN14 Although at first blush, judicial enforcement of a findings requirement would appear to constrict the role of administrative agencies, in reality, the effect could be to the contrary. Because, notes Judge Bazelon, it provides a framework for principled decision-making, a findings requirement serves to "diminish the importance of judicial review by enhancing the integrity of the administrative process." (*Environmental Defense Fund, Inc. v. Ruckelshaus* (D.C.Cir. 1971) 439 F.2d 584, 598.) By exposing the administrative agency's mode of analysis, findings help to constrict and define the scope of the judicial function. "We must know what [an administrative] decision means," observed Mr. Justice Cardozo, "before the duty becomes ours to say whether it is right or wrong." (*United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1935) 294 U.S. 499, 511 [79 L.Ed. 1023, 1032, 55 S.Ct. 462].)

Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency. [FN15] (6) (See fn. 16.) Moreover, *517 properly constituted findings [FN16] enable the parties to the agency proceeding to determine whether and on what basis they should seek review. (See *In re Sturm* (1974) ante, pp. 258, 267 [113 Cal.Rptr. 361, 521 P.2d 97]; *Swars v. Council of City of Vallejo, supra*, at p. 871.) They also serve a public relations function by helping to persuade the parties that administrative

decision-making is careful, reasoned, and equitable.

FN15 "Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to read the record, speculate upon the portions which probably were believed by the board, guess at the conclusions drawn from credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board. ..." (3 Anderson, American Law of Zoning (1968) § 16.41, p. 242.)

FN16 Although a variance board's findings "need not be stated with the formality required in judicial proceedings" (*Swars v. Council of City of Vallejo, supra*, at p. 872), they nevertheless must expose the board's mode of analysis to an extent sufficient to serve the purposes stated herein. We do not approve of the language in *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.App.2d 626, 639 [35 Cal.Rptr. 354], and *Ames v. City of Pasadena* (1959) 167 Cal.App.2d 510, 516 [334 P.2d 653], which endorses the practice of setting forth findings solely in the language of the applicable legislation.

By setting forth a reasonable requirement for findings and clarifying the standard of judicial review, we believe we promote the achievement of the intended scheme of land use control. Vigorous and meaningful judicial review facilitates, among other factors, the intended division of decision-making labor. (7) Whereas the adoption of zoning regulations is a legislative function (Gov. Code, § 65850), the granting of variances is a quasi-judicial, administrative one. (See *Johnston v. Board of Supervisors* (1947) 31 Cal.2d 66, 74 [187 P.2d 686]; *Kappadahl v. Alcan Pacific Co.* (1963)

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 9

222 Cal.App.2d 626, 634 [35 Cal.Rptr. 354].) If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure. (See 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) pp. 102- 103.) They could "[amend] ...the zoning code in the guise of a variance" (*Cow Hollow Improvement Club v. Board of Permit Appeals, supra*, at p. 181), and render meaningless, applicable state and local legislation prescribing variance requirements.

Moreover, courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. (8) A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. (See, e.g., 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 91; Bowden, *Article XXVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 501.). If the interest of *518 these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.

Abdication by the judiciary of its responsibility to examine variance board decision-making when called upon to do so could very well lead to such subversion. [FN17] Significantly, many zoning boards employ adjudicatory procedures that may be characterized as casual. (See Comment, *Judicial Control over Zoning Boards of Appeal: Suggestions for Reform* (1965) 12 U.C.L.A. L.Rev. 937, 950. Cf. *Bradbeer v. England* (1951) 104 Cal.App.2d 704, 710 [232 P.2d 308].) The availability of careful judicial review may help conduce these boards to insure that all parties have an opportunity fully to present their evidence and arguments. Further, although we emphasize that we have no reason to believe that such a circumstance exists in the case at bar, the membership of some zoning boards may be inadequately insulated from the interests whose advocates most frequently seek

variances. (See e.g., 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 100.) Vigorous judicial review thus can serve to mitigate the effects of insufficiently independent decision-making.

FN17 See generally Comment, *Zoning: Variance Administration in Alameda County* (1962) 50 Cal.L.Rev. 101, 107 and footnote 42. See also Note, *Administrative Discretion in Zoning* (1969) 82 Harv.L.Rev. 668, 672 and sources cited therein.

2. *The planning commission's summary of "factual data" - its apparent "findings" - does not include facts sufficient to satisfy the variance requirements of Government Code section 65906.*

As we have mentioned, at least two sets of legislative criteria appear applicable to the variance awarded: Government Code section 65906 and Los Angeles County Zoning Ordinance No. 1494, section 522. (9) The variance can be sustained only if *all* applicable legislative requirements have been satisfied. Since we conclude that the requirements of section 65906 have not been met, the question whether the variance conforms with the criteria set forth in Los Angeles County Zoning Ordinance No. 1494, section 522 becomes immaterial. [FN18] *519

FN18 We focus on the statewide requirements because they are of more general application. If we were to decide that the criteria of section 65906 had been satisfied, we would then be called upon to determine whether the requirements set forth in the county ordinance are consistent with those in section 65906 and, if so, whether these local criteria also had been satisfied.

The local criteria need be squared with the state criteria since the section 65906 requirements prevail over any inconsistent requirements in the county ordinance. The stated purpose of title 7, chapter 4, of the Government Code, which includes section

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 10

65906, is to provide limitations - albeit minimal ones - on the adoption and administration of zoning laws, ordinances, and regulations by counties and nonchartered cities. (See fn. 6, *ante*.) Section 65802 of the code declares that "[n]o provisions of [the Government Code], other than the provisions of [chapter 4], and no provisions of any other code or statute shall restrict or limit the procedures provided in [chapter 4] by which the legislative body of any county or city enacts, amends, administers, or provides for the administration of any zoning law, ordinance, rule or regulation." The clear implication is that chapter 4 does restrict or limit these procedures. (See also Cal. Const., art. XI, § 11.)

If local ordinances were allowed to set a lesser standard for the grant of variances than those provided in section 65906, a county or city could escape the prohibition against granting use variances added to section 65906 in 1970 (see fn. 5, *ante*) merely by enacting an ordinance which would permit the grant of use variances. Clearly the Legislature did not intend that cities and counties to which the provisions of chapter 4 apply should have such unfettered discretion.

We summarize the principal factual data contained in the Los Angeles County Regional Planning Commission's report, which data the commission apparently relied on to award the variance. [FN19] The acreage upon which the original real party in interest [FN20] sought to establish a mobile home park consists of 28 acres; it is a hilly and in places steep parcel of land. At the time the variance was granted, the property contained one single-family residence. Except for a contiguous area immediately to the southeast which included an old and flood-damaged subdivision and a few commercial structures, the surrounding properties were devoted exclusively to scattered single-family residences.

[FN19] We confine our analysis to the relationship between the commission's fact summary and its ultimate decision; we do

not consider the testimonial evidence directly. To sustain the grant of the variance of course would require that we conclude that substantial evidence supports the findings and that the findings support the variance award. Since we decide below, however, that the commission's fact summary does not include sufficient data to satisfy the section 65906 requirements, we need not take the further step of comparing the transcript to the fact summary. Our basis for so proceeding lies in Code of Civil Procedure section 1094.5, which defines "abuse of discretion," one of several possible grounds for issuance of a writ of mandamus, to include instances in which "the order or decision [of the administrative agency] is not supported by the findings, or the findings are not supported by the evidence." (Italics added.)

[FN20] See footnote 3, *ante*.

The proposed mobile home park would leave 30 percent of the acreage in its natural state. An additional 25 percent would be landscaped and terraced to blend in with the natural surroundings. Save in places where a wall would be incompatible with the terrain, the plan contemplated enclosure of the park with a wall; it further called for rechanneling a portion of Topanga Canyon Creek and anticipated that the developers would be required to dedicate an 80-foot-wide strip of the property for a proposed realignment of Topanga Creek Boulevard. *520

The development apparently would partially satisfy a growing demand for new, low cost housing in the area. Additionally, the project might serve to attract further investment to the region and could provide a much needed fire break. Several data indicate that construction on the property of single-family residences in conformance with the zoning classification would generate significantly smaller profits than would development of the mobile home park. Single-family structures apparently would necessitate costly grading, and the proposed highway realignment would require a fill 78 feet high, thereby rendering the property unattractive for

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 11

conventional residential development. Moreover, the acreage is said not to be considered attractive to parties interested in single-family residences due, in the words of the report's summary of the testimony, to "the nature of the inhabitants" in the vicinity and also because of local flood problems.

These data, we conclude, do not constitute a sufficient showing to satisfy the section 65906 variance requirements. That section permits variances "only when, because of *special* circumstances applicable to the property, ... the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." (Italics added.) (10) This language emphasizes *disparities* between properties, not treatment of the subject property's characteristics in the abstract. (See *Minney v. City of Azusa* (1958) 164 Cal.App.2d 12, 31 [330 P.2d 255]; cf. *In re Michener's Appeal* (1955) 382 Pa. 401 [115 A.2d 367, 371]; *Beirn v. Morris* (1954) 14 N.J. 529 [103 A.2d 361, 364]; Note, *Administrative Discretion in Zoning* (1969) 82 Harv. L.Rev. 668, 671-672.) It also contemplates that at best, only a small fraction of any one zone can qualify for a variance. (See generally 3 Anderson, *American Law of Zoning* (1968) § 14.69, pp. 62-65.)

The data contained in the planning commission's report focus almost exclusively on the qualities of the property for which the variance was sought. In the absence of comparative information about surrounding properties, these data lack legal significance. Thus knowledge that the property has rugged features tells us nothing about whether the original real party in interest faced difficulties different from those confronted on neighboring land. [FN21] Its assurances that it would landscape and terrace parts of the property and leave others in their natural state are all well and good, but they bear not at all on the critical issue whether a variance *521 was necessary to bring the original real party in interest into substantial parity with other parties holding property interests in the zone. (See *Hamilton v. Board of Supervisors, supra*, at p. 66.)

^{FN21} Indeed, the General Plan for Topanga Canyon suggests that the subject

property is not uniquely surfaced; it states that the entire area is characterized by "mountainous terrain, steep slopes and deep canyons interspersed with limited areas of relatively flat or rolling land."

The claim that the development would probably serve various community needs may be highly desirable, but it too does not bear on the issue at hand. Likewise, without more, the data suggesting that development of the property in conformance with the general zoning classification could require substantial expenditures are not relevant to the issue whether the variance was properly granted. Even assuming for the sake of argument that if confined to the subject parcel and no more than a few others in the zone, such a burden could support a variance under section 65906, for all we know from the record, conforming development of other property in the area would entail a similar burden. Were that the case, a frontal attack on the present ordinance or a legislative proceeding to determine whether the area should be rezoned might be proper, but a variance would not. (1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 95; Bowden, *Article XVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 506.)

Although they dispute that section 65906 requires a showing that the characteristics of the subject property are exceptional, the current real parties in interest would nevertheless have us speculate that the property is unlike neighboring parcels. They point out that the plot has rugged terrain and three stream beds [FN22] and that the Topanga Creek Boulevard realignment would bisect the property. (11) Speculation about neighboring land, however, will not support the award of a variance. The party seeking the variance must shoulder the burden of demonstrating before the zoning agency that the subject property satisfies the requirements therefor. (*Tustin Heights Association v. Board of Supervisors* (1959) 170 Cal.App.2d 619, 627 [339 P.2d 914].) Thus neither an administrative agency nor a reviewing court may assume without evidentiary basis that the character of neighboring property is different from that of the land for which the variance is sought. [FN23] *522

11 Cal.3d 506
 11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836
 (Cite as: 11 Cal.3d 506)

Page 12

FN22 Interestingly, since the witnesses who testified in favor of the variance never mentioned the stream beds, the original real party in interest apparently did not regard the beds as disadvantageous. Rather, a witness who opposed the variance offhandedly mentioned the beds as illustrative of the scenic beauty of the area. The trial court seized upon this testimony and used it in justifying the variance award.

FN23 In fact, other parcels in the zone may well have the features that the successor real parties in interest speculate are confined to the subject property. Rugged terrain apparently is ubiquitous in the area (see fn. 21, *ante*), and because the stream beds and highway must enter and exit the subject property somewhere, they may all traverse one or more neighboring parcels. Further, for all we know from the commission's findings, stream beds may traverse most parcels in the canyon.

(12) Moreover, the grant of a variance for nonconforming development of a 28-acre parcel in the instant case is suspect. Although we do not categorically preclude a tract of that size from eligibility for a variance, we note that in the absence of unusual circumstances, so large a parcel may not be sufficiently unrepresentative of the realty in a zone to merit special treatment. By granting variances for tracts of this size, a variance board begins radically to alter the nature of the entire zone. Such change is a proper subject for legislation, not piecemeal administrative adjudication. (See *Sinclair Pipe Line Co. v. Village of Richton Park* (1960) 19 Ill.2d 370 [167 N.E.2d 406]; *Appeal of the Catholic Cemeteries Association* (1954) 379 Pa. 516 [109 A.2d 537]; *Civil City of Indianapolis v. Ostrom R. & Construction Co.* (1931) 95 Ind.App. 376 [176 N.E. 246].) (13) Since there has been no affirmative showing that the subject property differs substantially and in relevant aspects from other parcels in the zone, we conclude that the variance granted amounts to the kind of "special privilege" explicitly prohibited by Government Code section 65906.

We submit, in summary, that this case illuminates two important legal principles. First, by requiring that administrative findings must support a variance, we emphasize the need for orderly legal process and the desirability of forcing administrative agencies to express their grounds for decision so that reviewing courts can intelligently examine the validity of administrative action. Second, by abrogating an unsupported exception to a zoning plan, we conduce orderly and planned utilization of the environment.

We reverse the judgment and remand the cause to the superior court with directions to issue a writ of mandamus requiring the Los Angeles Board of Supervisors to vacate its order awarding a variance. We also direct the superior court to grant any further relief that should prove appropriate.

Wright, C. J., McComb, J., Mosk, J., Burke, J., Sullivan, J., and Clark, J., concurred. *523

Cal., 1974.

Topanga Ass'n For A Scenic Community v. Los Angeles County

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21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 1

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WILLIAM DESMOND et al., Plaintiffs and
 Appellants,
 v.
 COUNTY OF CONTRA COSTA, Defendant and
 Respondent.

No. A061677.

Court of Appeal, First District, Division 3,
 California.

Dec 23, 1993.

SUMMARY

In mandamus proceedings to review a decision of county supervisors denying an application for a land use permit for a residential second unit, the trial court denied plaintiffs' petition on the ground that they had failed to establish either that the board of supervisors' finding of unsuitability to the character of the surrounding neighborhood was not supported by substantial evidence in the record, or that this finding was legally irrelevant to the denial of the request for a land use permit. Neighbors had complained that because of the nature of the cul-de-sac on which plaintiffs' primary residence was located, an additional living unit on the street would create traffic, parking, safety, noise, and nuisance problems. (Superior Court of Contra Costa County, No. C92-04871, Ellen Sickles James, Judge.)

The Court of Appeal affirmed, holding that the fact that plaintiffs' proposed second unit would be the first such unit in the neighborhood did not render irrelevant, as a matter of law, the board's finding of unsuitability to the character of the surrounding neighborhood. There was ample evidence of community concern with the impact of a residential second rental unit on the general aesthetic character of the neighborhood, as well as on traffic, safety, and protection of property values. The court held

that the standards imposed by the applicable county ordinances did not exceed the maximum standards set by Gov. Code, § 65852.2, for second units in residential zones. (Opinion by Merrill, J., with White P. J., and Werdegar, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 131--Judicial Review and Relief--Scope and Extent of Review--Evidence--Substantial Evidence Rule. Under current interpretations of the substantial evidence test as applied in review of administrative agency action, an appellate court must examine all relevant evidence in the entire record, considering both the^{*331} evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence." For this purpose, substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance, reasonable in nature, credible, and of solid value, and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. At the trial court level and on appeal, the petitioner in an administrative mandamus proceeding has the burden of proving that the agency's decision was invalid and should be set aside, because it is presumed that the agency regularly performed its official duty.

(2) Zoning and Planning § 30--Conditional Uses; Permits and Certificates--Judicial Review--Residential Second Unit.

On review of a decision of county supervisors denying an application for a land use permit, the trial court did not err in concluding that the administrative findings of the board of supervisors were supported by substantial evidence. Plaintiffs submitted an application for a land use permit for a residential second unit. Neighbors gave ample testimony that because of the nature of the

21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 2

cul-de-sac on which the primary residence was located, an additional living unit on the street would create traffic, parking, safety, noise, and nuisance problems. The fact that plaintiffs' proposed second unit would be the first such unit in the neighborhood did not render irrelevant, as a matter of law, the board's finding of unsuitability to the character of the surrounding neighborhood. There was ample evidence of community concern with the impact of a residential second rental unit on the general aesthetic character of the neighborhood, as well as on traffic, safety, and protection of property values.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 835, 855.]

(3) Zoning and Planning § 26--Conditional Uses; Permits and Certificates-- Proceedings to Procure--Residential Second Unit.

On review of a decision of county supervisors denying an application for a land use permit, the trial court did not err in concluding that the administrative findings of the board of supervisors were supported by substantial evidence. The standards imposed by the applicable county ordinances did not exceed the maximum standards set by Gov. Code, § 65852.2, for second units in residential zones. The statute was adopted to encourage local governments to enact their own ordinances allowing and regulating so-called "granny flat" residential second units *332 in single-family and multi-family zones where they would otherwise be prohibited. The county's second unit ordinance complied with Gov. Code, § 65852.2, subd. (a), which gives local agencies discretion in the specific criteria they may adopt for approving second units. The "maximum standards" set forth in Gov. Code, § 65852.2, subd. (b), are not relevant when a local government has adopted an appropriate ordinance governing second units.

COUNSEL

William G. Segesta for Plaintiffs and Appellants.

Victor J. Westman, County Counsel, and Diana J. Silver, Deputy County Counsel, for Defendant and Respondent.

MERRILL, J.

William and Tanya Desmond appeal from a judgment denying their petition for writ of administrative mandate. That petition sought to set aside the decision of the Board of Supervisors (Board) of the County of Contra Costa (County) denying their application for a land use permit. Appellants contend that the administrative findings of the Board are not supported by substantial evidence, and that the standards imposed by the applicable County ordinances exceed the maximum standards set by Government Code section 65852.2 for second units in residential zones. We disagree and therefore affirm the judgment.

I. Factual And Procedural Background

The subject property, which is located at 8 Golden Hill Court in Walnut Creek, is zoned R-15, single-family residential district. Appellants sought and received issuance of a building permit to construct an addition to their single-family home. The addition consisted of a new two-car garage and second-level bedroom addition with a separate foundation detached from the principal structure. The new unit was attached to the existing single-family home by means of second-story decking. The building permit contained a provision that no kitchen facilities could be included in the new unit unless appellants first obtained a land use permit to allow construction of a residential second unit at that location. Appellants then submitted an application for a land use permit for a residential second unit.

Relying on alleged statements by unnamed County employees that issuance of a use permit would be "pro forma," appellants did not wait to obtain^{*333} the permit before commencing construction of the new unit. When a hearing was held on appellants' application for a permit to establish a residential second unit the County zoning administrator approved it. Thereafter, a group of neighbors filed an appeal to the County Planning Commission from the zoning administrator's approval of the issuance of the land use permit. County staff recommended that the planning commission uphold the decision of the zoning administrator, but following a public hearing and review of the matter, the planning commission voted unanimously to uphold the

21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 3

neighbors' appeal and deny the application, on the grounds that the proposed second residential unit was not architecturally compatible with the overall character of the neighborhood, and that development of the second unit would present a threat to public health, safety and welfare.

Appellants appealed the decision of the planning commission to the County Board, which held a public hearing on the matter. At the close of the hearing, the Board declared its intent to deny the appeal and the application, and directed the staff to prepare findings to support its decision. By a vote of three to two, the Board affirmed its earlier expressed intent, denied the appeal and the application, and adopted the staff findings.

In its findings, the Board stated that the property was currently designated in the County general plan as single-family residential, low density. The Board found that the proposed residential second unit was "architecturally incompatible with the overall neighborhood character and the primary residence in terms of scale, colors, materials and designs for trims, windows, roof, roof pitch and other exterior physical features" (finding No. 7); that development of the second unit would "present a threat to the public health, safety and welfare in that the second unit would result in excessive neighborhood noise and would create traffic and parking problems" (finding No. 8); that "[s]pecial conditions or unique characteristics of the subject property and its location or surroundings are not established" (finding No. 9); and that "[a] second unit is not suitable in this location, is out of character with the surrounding neighborhood and would be an intrusion into the neighborhood" (finding No. 10). In support of these findings, the Board cited the administrative record on appellants' application for a land use permit, County Ordinance Code sections 82-24.1002 and 26-2.2008, and the "on-site observations and comments" by a member of the Board at the public hearing.

Appellants filed a petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5, asking the court for a writ of mandate and injunctive relief ordering the County and the Board to vacate the decision denying appellants' application and to issue a land use permit for the residential second unit. The trial

court denied appellants' petition on the *334 ground that appellants had failed to establish either that finding No. 10 was not supported by substantial evidence in the record, or that that finding was legally irrelevant to the denial of the request for a land use permit.

In its decision, the trial court stated: "Specifically, [appellants] do not point to evidence that a [residential] second unit is not out of character with the surrounding neighborhood. There is substantial evidence in the record that the second residential unit would be out of character because the surrounding streets at the moment contain only single-family dwellings.

"[Appellants'] argument that Finding No. 10 is irrelevant [sic] is not raised in the petition and is not supported by any authority.

"Finding No. 10 supports Finding No. 8: development of the second unit will present a threat to public health, safety, and welfare contrary to one of the requirements for a land use permit (C.C.C. Ord. Code § 82-24.1002(13)). It was within the discretion of the [Board and the County] to take the concerns of the neighbors into account and to decide that the public welfare would be served by denying the permit; that ... Finding No. 10 ... is sufficient to support the denial of [appellants'] application for a land use permit."

On this basis, the trial court denied appellant's petition for writ of mandate and entered judgment for the County. This appeal followed.

II. Standard of Review

In bringing their petition for writ of administrative mandamus, appellants argued that the County Board prejudicially abused its discretion. Under Code of Civil Procedure section 1094.5, subdivision (b), "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Both in the trial court and on appeal, appellants have conceded that this is not a case in which the trial court is authorized by law to exercise its independent judgment on the evidence, and thus that abuse of discretion is

21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 4

established only upon a determination that the findings of the administrative body were not supported by substantial evidence in the light of the whole record. (Code Civ. Proc., § 1094.5, subd. (c); *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32 [112 Cal.Rptr. 805; 520 P.2d 29] [substantial evidence standard used when no fundamental vested right involved].)

The scope of our review of the subject administrative agency action in this case is identical with that of the superior court. The same substantial evidence *335 standard applies, and the issue is whether the findings of the County Board were based on substantial evidence in light of the entire administrative record. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 149, fn. 22 [93 Cal.Rptr. 234, 481 P.2d 242]; *Zuniga v. County of San Mateo Dept. of Health Services* (1990) 218 Cal.App.3d 1521, 1530-1531 [267 Cal.Rptr. 755]; *County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 554-555 [195 Cal.Rptr. 895].) Moreover, because the trial court did not exercise its independent judgment in reviewing the Board decision, but instead applied the substantial evidence test, we must examine the findings made by the Board itself to determine whether they were supported by substantial evidence, rather than limiting ourselves to a review of the findings made by the trial court. (*Stearns v. Fair Employment Practice Com.* (1971) 6 Cal.3d 205, 211 [98 Cal.Rptr. 467, 490 P.2d 1155]; *Bixby v. Pierno*, *supra*, 4 Cal.3d at pp. 143-144, fn. 10; Cal. Administrative Mandamus (Cont.Ed.Bar 1989) §§ 4.162-4.163, 14.27, pp. 205-207, 463-464.)

(1) Under current interpretations of the substantial evidence test as applied in review of administrative agency action, we must examine all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence." (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 488-490 [95 L.Ed. 456, 467-468, 71 S.Ct. 456]; *Bixby v. Pierno*, *supra*, 4 Cal.3d at p. 149, fn. 22; *LeVesque v. Workmen's Comp. App. Bd.* (1970) 1 Cal.3d 627, 635-639, fn. 22 [83 Cal.Rptr. 208, 463 P.2d 432]; *Zuniga v. County of San Mateo Dept. of Health Services*,

supra, 218 Cal.App.3d at pp. 1530-1531; *County of San Diego v. Assessment Appeals Bd. No. 2*, *supra*, 148 Cal.App.3d at pp. 554-555.) For this purpose, "... substantial evidence has been defined in two ways: first, as evidence of ' 'ponderable legal significance ... reasonable in nature, credible, and of solid value' ' ('Ofsevit v. Trustees of Cal. State University & Colleges' (1978) 21 Cal.3d 763, 773, fn. 9 [148 Cal.Rptr. 1, 582 P.2d 88]); and second, as ' 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion' ' ('Hosford v. State Personnel Bd. (1977) 74 Cal.App.3d 302, 307 [141 Cal.Rptr. 354])." (*County of San Diego v. Assessment Appeals Bd. No. 2*, *supra*, 148 Cal.App.3d at p. 555.)

At the trial court level, the petitioner in an administrative mandamus proceeding has the burden of proving that the agency's decision was invalid and should be set aside, because it is presumed that the agency regularly performed its official duty. When the standard of review is the substantial evidence test, as it is here, it is presumed that the findings and actions of the administrative agency were supported by substantial evidence. (*336) *Caveness v. State Personnel Bd.* (1980) 113 Cal.App.3d 617, 630 [170 Cal.Rptr. 54]; *Barnes v. Personnel Department* (1978) 87 Cal.App.3d 502, 505 [151 Cal.Rptr. 94].) Thus, since the same standard of review applies now on appeal as did in the trial court, the burden is on appellant to show there is no substantial evidence whatsoever to support the findings of the Board. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970 [191 Cal.Rptr. 415].)

III. Sufficiency of the Evidence to Support Findings

(2) Applying this standard of review to the decision of the County Board in this case, we are of the opinion that the administrative record does contain substantial evidence to support the Board's affirmance of the denial of appellant's application for a land use permit for the purpose of establishing a second residential unit.

Under the applicable County ordinances, of which we take judicial notice (Evid. Code, §§ 452, subd. (b), 459; *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 24 [157 Cal.Rptr. 706, 598 P.2d 866]), the County planning agency division "shall make"

21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 5

certain findings before granting a land use permit for a residential second unit. (Contra Costa County [hereafter C.C.C.] Ord. Code, § 82-24.1002.) Among these findings are that "[t]he second unit is architecturally compatible with overall neighborhood character and the primary residence in terms of scale, colors, materials and design for trim, windows, roof, roof pitch and other exterior physical features"; "[t]he second unit does not result in excessive neighborhood noise, traffic, or parking problems"; and "[d]evelopment of the second unit does not present a threat to public health, safety or welfare." (C.C.C. Ord. Code, § 82-24.1002, subds. (8), (11), (13).)

In addition, the provision on granting land use permits for residential second units specifically requires that the agency must make findings in accordance with the separate ordinance dealing with variance, conditional use and special permits found at article 26-2.20 of the County Ordinance Codes. The findings that must be made prior to granting a conditional use permit include that the proposed land use "shall not adversely affect the preservation of property values"; "shall not create a nuisance and/or enforcement problem within the neighborhood"; and "shall not encourage marginal development within the neighborhood." (C.C.C. Ord. Code, §§ 26-2.2008, subds. (3), (5), (6); 82-24.1002.)

Failure to make any one of these findings must result in denial of the application for a land use permit. (C.C.C. Ord. Code, §§ 26-2.2008, 82-24.1002.) Because we are reviewing a *denial* of a requested land use permit, *337 it is not necessary to determine that *each* finding by the Board was supported by substantial evidence. As long as the Board made a finding that any one of the necessary elements enumerated in the ordinances was lacking, and this finding was itself supported by substantial evidence, the Board's denial of appellant's application must be upheld.

Finding No. 8, stating that the development of a residential second unit would present a threat to public health, safety and welfare by resulting in excessive neighborhood noise, traffic and parking problems, negates two of the necessary elements for granting a land use permit for a second unit, as enumerated in County Ordinance Code section

82-24.1002, subdivisions (11) and (13). Neighbors of the proposed second residential unit gave ample testimony that because of the nature of the cul-de-sac on which the primary residence is located, an additional living unit on the street would create traffic, parking, safety, noise and nuisance problems. Contrary to appellants' position, expert testimony on these issues is not necessary. It is appropriate and even necessary for the County to consider the interests of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of neighbors may constitute substantial evidence on this issue. (*Smith v. County of Los Angeles* (1989) 211 Cal.App.3d 188, 201-204 [259 Cal.Rptr. 231]; *Nelson v. City of Selma* (9th Cir. 1989) 881 F.2d 836, 840.)

Finding No. 10, stating that "[a] second unit is not suitable in this location, is out of character with the surrounding neighborhood and would be an intrusion into the neighborhood," is related to several of the enumerated requirements for issuance of a residential second unit land use permit. Provisions in the County ordinances relevant to this finding include that the second unit be "architecturally compatible with overall neighborhood character" (C.C.C. Ord. Code, § 82-24.1002, subd. (9)); that it not "adversely affect the preservation of property values" (C.C.C. Ord. Code, § 26-2.2008, subd. (3)); that it not create "a nuisance and/or enforcement problem within the neighborhood or community" (C.C.C. Ord. Code, § 26-2.2008, subd. (5)); that it not "encourage marginal development within the neighborhood" (C.C.C. Ord. Code, § 26-2.2008, subd. (6)); and, generally, that it not be detrimental to health, safety and general welfare (C.C.C. Ord. Code, §§ 26-2.2008, subd. (1); 82-24.1002, subd. (13)).

These provisions in the County Ordinance Code give the County and its planning agencies the authority to consider the effect of proposed projects on the character of the surrounding neighborhood. It is well established that the concept of public welfare encompasses a broad range of factors, including aesthetic values as well as monetary and physical ones, and that a concern*338 for aesthetics and "character" is a legitimate governmental objective. (*Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490, 502 [69 L.Ed.2d 800, 811-812, 101 S.Ct. 2882]

21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 6

; *Berman v. Parker* (1954) 348 U.S. 26, 33 [99 L.Ed. 27, 37-38, 75 S.Ct. 98]; *Guinnane v. San Francisco City Planning Com.* (1989) 209 Cal.App.3d 732, 741 [257 Cal.Rptr. 742]; *Novi v. City of Pacifica* (1985) 169 Cal.App.3d 678, 682 [215 Cal.Rptr. 439].) Other "concerns that fall well within the domain of the public interest and welfare" include parking, traffic and visual impact. (*Guinnane v. San Francisco City Planning Com.*, *supra*, 209 Cal.App.3d at p. 743.)

Thus, although finding No. 10 does not expressly restate any particular one of the several relevant ordinance requirements, it is actually a summation of several of them. It articulates various significant elements necessarily included in the general concept of public welfare but not expressly enumerated in the County Ordinance Code. It is therefore directly related to finding No. 8, stating that the development of the proposed second residential unit would present a threat to public health, safety and welfare. This finding of unsuitability to the character of the surrounding neighborhood is sufficient by itself to support the denial of appellants' application for a land use permit. (*Guinnane v. San Francisco City Planning Com.*, *supra*, 209 Cal.App.3d at pp. 740-743 [local agency denied permit on basis of finding that large size of house was "not in character" with surrounding neighborhood even though in technical compliance with zoning and building codes; upheld].)

Contrary to appellants' position, the fact that their proposed second unit would be the first such unit in the neighborhood does not render finding No. 10 irrelevant as a matter of law. There are many reasons why a residential second unit might be unsuitable for a particular location and "out of character" with a neighborhood, aside from the fact that it is the first such unit in that location. Such a unit might be perfectly suitable in a different neighborhood with different conditions, even though it was the first such unit in that neighborhood. The kinds of houses in this neighborhood, the street configurations (mostly cul-de-sacs), the traffic patterns, and the lot sizes, are all significant factors to be considered in making this determination. It is clear from the record that these considerations were taken into account by the Board in this case.

Moreover, the County Ordinance Code specifically requires a consideration of the effect of a proposed use on neighboring property values. The fact that a second unit would be the first such development in a given neighborhood may well be relevant to a determination of the effect of the unit on local property values. *339

Finding No. 10 is supported by substantial evidence in the administrative record. In the first place, the same evidence supporting finding No. 8 also supports finding No. 10. To the extent the proposed residential second unit would result in excessive neighborhood noise, traffic, or parking problems, it would clearly be "an intrusion into the neighborhood" and "not suitable to this location."

There was ample evidence of community concern with the impact of a residential second rental unit on the general aesthetic character of the neighborhood, as well as on traffic, safety, and protection of property values. These concerns were repeatedly expressed by neighbors opposing the application. In addition, one member of the Board testified to his personal observations of the proposed residential second unit and the surrounding neighborhood, and stated his opinion that it was not in character with the area. The Board properly took these opinions into account in making its determination, and they constitute substantial evidence to support the discretionary finding that the proposed second residential unit was intrusive and not suitable to the character of the surrounding neighborhood. (*Smith v. County of Los Angeles*, *supra*, 211 Cal.App.3d at pp. 201-204.)

Thus, at least two of the Board's findings (findings No. 8 and 10) were supported by substantial evidence in the administrative record. Each of these findings was contrary to the requirements for issuance of a land use permit; either one was sufficient to support the denial of appellants' application.

IV. Legal Relevance of the Board's Findings

(3) Much of appellants' argument on appeal concerns their position that the Board's findings were impermissible under the maximum standards for residential second units purportedly set by Government Code section 65852.2. [FN1] This

21 Cal.App.4th 330
 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
 (Cite as: 21 Cal.App.4th 330)

Page 7

contention is without merit.

FN1 Unless otherwise indicated, all further statutory references are to the Government Code.

Section 65852.2 was adopted to encourage local governments to enact their own ordinances allowing and regulating so-called "granny flat" residential second units in single-family and multi-family zones where they would otherwise be prohibited. (*Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4th 543, 545-546 [7 Cal.Rptr.2d 848].) The statute sets up a three-option approach under which a local government may choose to ban all residential second units on condition of making certain findings that such units would have specific adverse impacts on public health, safety and welfare (§ 65852.2, subd. (c)); adopt its own ordinance providing for the creation of second units and establishing various criteria for approving them *340 (§ 65852.2, subd. (a)); or do neither and follow a state-prescribed procedure for approving or disapproving applications for creation of second units (§ 65852.2, subd. (b)). (*Wilson v. City of Laguna Beach, supra*, 6 Cal.App.4th at p. 553.)

Under section 65852.2, subdivision (a), any local agency may adopt an ordinance providing for the creation of second units, consistent with a list of six provisions. These provisions are phrased in permissive terms stating that local standards for second units "may include, but are not limited to" various criteria. In contrast, under section 65852.2, subdivision (b), every local agency which fails to adopt an ordinance governing second units in accordance with subdivisions (a) or (c) "shall grant a special use or a conditional use permit for the creation of a second unit if the second unit complies" with an enumerated list of nine specific requirements. (Italics added.) Unlike the provisions in subdivision (a), those contained in subdivision (b) do not use permissive or discretionary terms, but are mandatory.

At the end of this list of requirements, subdivision (b) states: "No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this

subdivision.

"This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

"This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units." (§ 65852.2, subd. (b).)

Appellants concede that because the County has adopted an ordinance regulating the creation of residential second units, it is governed by section 65852.2, subdivision (a). However, they contend that the language in subdivision (b) stating that "[t]his subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units" applies equally to an ordinance drafted under subdivision (a), and thus, an ordinance enacted pursuant to subdivision (a) may not impose standards which exceed those enumerated in subdivision (b). In support of this contention, appellants argue that the intent of the statute is to encourage the creation of residential second units by barring undue local restrictions on their creation.

This argument ignores the broadly permissive language contained in section 65852.2, subdivision (a), giving local agencies discretion in the specific *341 criteria they may adopt for approving second units. For example, subdivision (a)(1) states that "[a]reas may be designated within the jurisdiction of the local agency where second units *may* be permitted." (Italics added.) The necessary implication of this provision is that a local agency may forbid the creation of second units in other areas. Subdivision (a)(3) states: "Standards *may* be imposed on second units which *include, but are not limited to*, parking, height, setback, lot coverage, architectural review, and maximum size of a unit." (Italics added.) This language clearly contemplates that local agencies may impose *additional* standards on the creation of residential second units.

21 Cal.App.4th 330
21 Cal.App.4th 330, 25 Cal.Rptr.2d 842
(Cite as: 21 Cal.App.4th 330)

Page 8

Similarly, subdivision (a)(4) states that a local agency "may find that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot." (Italics added.) The implication of this language is that a local agency may also decline to make such a determination, in its discretion.

In short, section 65852.2, subdivision (a), which applies to local agencies that have adopted ordinances providing for the creation of second units, contains broadly permissive language on the standards that a local government may impose on applications for such units. The "maximum standards" set forth in subdivision (b), by their own terms, apply only to *that* subdivision, and are not relevant when a local government has adopted an appropriate ordinance governing second units.

The County's second unit ordinance complies with section 65852.2, subdivision (a). There is nothing in the standards and criteria set forth in the County's ordinance that conflicts with anything in subdivision (a), or with the legislative intent of that statute. To the contrary, the provisions of the ordinance are consistent with the suggested standards set forth in subdivision (a), and are in accord with the kinds of land use regulations that have been consistently upheld in this state. (*Guinnane v. San Francisco City Planning Com.*, *supra*, 209 Cal.App.3d at pp. 736-743.)

The judgment is affirmed.

White, P. J., and Werdegar, J., concurred.

Cal.App.1.Dist., 1993.

Desmond v. County of Contra Costa

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August 17, 2004

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

Re: **Comments on Draft Staff Analysis**
Acquisition of Agricultural Land for a School Site, 98-TC-04

Dear Paula:

On July 28, 2004, your office issued its draft staff analysis for the *Acquisition of Agricultural Land for a School Site* test claim. In the draft staff analysis your office finds the test claim legislation does not impose reimbursable state-mandated activities upon school districts because the decision to build and locate a school site is within the discretion of the school district and because school districts are not required to seek state funding under the Leroy Greene School Facilities Act. The claimant respectfully disagrees with Commission staff's first conclusion that in all cases a school district has complete discretion as to the building and siting of a new school site.

School Districts are Required to House and Educate All Students Within the District's Boundaries.

All students between the ages of six and 18 years of age are subject to compulsory education and must attend the school within which the students' parent or guardian resides.¹ In addition, school districts must provide a plan outlining pupil promotion and retention from grade level to grade level. School districts, based on the requirements outlined in the Education Code, must house and educate all students that can establish residency within the district. Moreover, school districts must do so in a manner that does not risk the health or safety of its students.

¹ Education Code section 48200.

The claimant submits that the activities outlined in the test claim related to Education Code section 17215.5 are reimbursable under a specific set of circumstances: Circumstances that effectively remove all discretion from the school districts concerning the building and siting of a new school site. The draft staff analysis states that the decision to build a school is within the discretion of a school district: a conclusion that is in error under certain circumstances. For example, school districts that are grossly overpopulated or are facing an influx of students due to new development within the districts' boundaries have no choice but to build new school sites to house and educate those pupils that are legally bound and required to attend the school district. Moreover, the school district is required to provide the necessary space, accommodations, and resources to properly educate these pupils in a manner that does not jeopardize their health or safety. Under circumstances that lead to gross overcrowding of the school district, the decision to build a new school site is practically compelled as the district is required by law to provide a suitable environment to house and educate pupils that provides for their well being while on campus.

Couple a school district that is overpopulated or is facing additional development that will create overpopulation with the fact many districts have no choice but to seek out agricultural land for building a school site, you then have the recipe for mandated activities under Education Code section 17215.5. If a school district's only option to meet its state obligation to house and educate its students is to acquire agricultural land, then there is absolutely no discretion afforded the district. In this scenario, the district in question would not have the option to lease proper facilities or obtain other types of land that would eliminate the mandated activities outlined in section 17215.5.

In those cases where a school district is required to build a new school site to meet its state obligation to properly house and educate all students that can establish residency within its boundaries, and do so in a manner that protects the students' health and safety, and the only available option to the district is to acquire agricultural land, then the activities outlined in the test claim legislation related to Education Code section 17215.5 represent state-mandated activities. Since under this exact scenario the school district is practically compelled by the state to perform the necessary activities to acquire the land for a new school site, the activities outlined in the test claim are reimbursable.

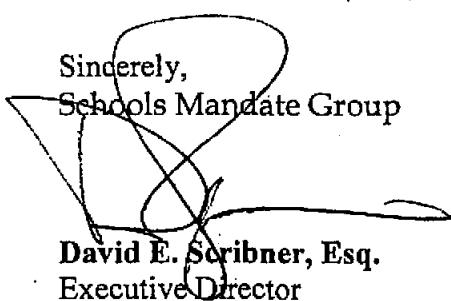
It is important to note that when a school district is overpopulated or faces overpopulation due to factors outside its control, the need for a new school site is not driven by some discretionary act, but rather the state mandate to house and educate all pupils that can establish residency within the district's boundaries. Practical compulsion is easy to find in this scenario since the school district has no choice but to ensure all students receive the necessary space and facilities as required by law. Furthermore, when the only available land to build a new school site is agricultural land, then the mandated activities outlined in the Education Code section 17215.5 and the test claim come into play.

Ms. Paula Higashi
Comments on Draft Staff Analysis
Acquisition of Agricultural Land for a School Site
August 17, 2004
Page 3 of 3

The claimant requests that Commission staff amend its final analysis to include a limited exception to reimbursement for only those districts that can establish they were practically compelled to build a new school site due to overpopulation or expected additional development and growth within the district *and* that the only available option was to acquire agricultural land. The activities claimable for this exception would stem from Education Code section 17215.5 only as the claimant does not dispute staff's conclusion as to Education Code section 17213.1.

* * *

If you have any questions or comments concerning this letter, please feel free to contact me at (916) 373-1060.

Sincerely,
Schools Mandate Group

David E. Scribner, Esq.
Executive Director

Cc: Mail List

Acquisition of Agricultural Land for a School Site Mail List

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Mr. Joseph Mullender, Jr. Attorney at Law 89 Rivo Alto Canal Long Beach, CA 90803	Mr. Gerald Shelton California Department of Education 1430 N Street, Suite 2213 Sacramento, CA 95814
Mr. Jim Spano State Controller's Office 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Ms. Beth Hunter Centration, Inc. 8316 Red Oak Street, Suite 101 Rancho Cucamonga, CA 91730
Ms. Sandy Reynolds Reynolds Consulting Group P.O. Box 987 Sun City, CA 92586	Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816
Mr. Jim Jaggers Centration, Inc. 12150 Tributary Point Drive, Suite 140 Gold River, CA 95670	Ms. Vivian Murai Department of Toxic Substances Control P.O. Box 806 Sacramento, CA 95812
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Ms. Lucille Ramos MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Ms. Jeannie Oropeza Department of Finance 915 L Street, 7th Floor Sacramento, CA 95814

Acquisition of Agricultural Land for a School Site Mail List

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