

Case No. S163680

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

**COMMITTEE FOR GREEN FOOTHILLS,
Plaintiff and Respondent,**

v.

**COUNTY OF SANTA CLARA and
THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA
CLARA,
Defendant and Petitioners,**

**THE LELAND STANFORD JUNIOR UNIVERSITY and THE BOARD
OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY**

Real Parties in Interest and Petitioners.

After a Published Decision by the Court of Appeal
Sixth Appellate District, Civil No. H030986

Santa Clara County Superior Court
The Honorable Leslie C. Nichols

**APPLICATION TO FILE AMICUS CURIAE
AND PROPOSED AMICUS CURIAE BRIEF OF
EDUCATION LEGAL ALLIANCE
OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
IN SUPPORT OF DEFENDANTS/PETITIONERS**

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TO: THE HONORABLE CHIEF JUSTICE OF THE CALIFORNIA
SUPREME COURT

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 8.520, the Education Legal Alliance of the California School Boards Association (“Amicus Curiae”) respectfully requests permission to file the accompanying amicus curiae brief (“Amicus Curiae Brief”) in support of Defendants/Petitioners, County of Santa Clara, the Board of Supervisors of the County of Santa Clara, Leland Stanford Junior University and the Board of Trustees of the Leland Stanford Junior University (collectively, the “Petitioners”). Amicus Curiae will address the issue of whether the 30-day statute of limitations to challenge determinations under the California Environmental Quality Act (“CEQA”) is triggered by the filing and posting of a facially valid Notice of Determination.

II. INTEREST OF AMICUS CURIAE

The California School Boards Association (“CSBA”) is a California non-profit corporation. CSBA is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. CSBA supports local school board

governance and advocates on behalf of school districts and county offices of education.

As part of CSBA, the Education Legal Alliance (the "Alliance") helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The Alliance represents its members, just under 800 of the state's approximately 1,000 school districts and county offices of education, by addressing legal issues of statewide concern to school districts. The Alliance's activities include joining in litigation where the interests of public education are at stake.

In the instant case, Amicus Curiae represents the interests of the numerous school districts in California whose construction programs and land acquisitions would be negatively affected by the uncertainty injected into their planning and contracting by the underlying decision. Standing in the unusual position of both project proponent and lead agency on their own projects, school districts have a significant interest in this Court protecting the certainty of the 30-day statute for challenging CEQA actions.

III. AMICUS CURIAE BRIEF WILL ASSIST THE COURT

Amicus Curiae have reviewed Petitioners' briefs and are familiar with the questions involved in this case and the scope of their presentation. Amicus Curiae believes that its Amicus Curiae Brief will assist the court in two key ways: (1) the Amicus Curiae Brief will outline the statutory

construction and legislative history of Public Resources Code section 21167, which indicates that the Legislature expressly intended the filing and posting of a facially valid Notice of Determination to trigger the 30-day statute of limitations and (2) the Amicus Curiae Brief will highlight how the appellate court's decision, if upheld, will have a chilling effect on land acquisition and the construction of much-needed school facilities.

IV. CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully request that the Court accept the accompanying Brief for filing in this case.

DATED: January 14, 2009

MILLER BROWN & DANNIS
MARK W. KELLEY
CLARISSA CANADY

By: 

Clarissa Canady

**Attorneys for Education Legal Alliance
of The California School Boards
Association**

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**PROPOSED AMICUS CURIAE BRIEF
OF THE EDUCATION LEGAL ALLIANCE
OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF DEFENDANTS/PETITIONERS**

COMES NOW Amicus Curiae, the Education Legal Alliance of the California School Boards Association, to offer the following Argument regarding the above captioned matter.

I. INTRODUCTION

The Education Legal Alliance of the California School Boards Association (“Amicus Curiae”) submits this amicus curiae brief in support of Petitioners, pursuant to California Rules of Court, Rule 8.520 (“Amicus Curiae Brief”). The California School Boards Association (“CSBA”) is a California non-profit corporation. CSBA is a member-driven association composed of nearly 1,000 Kindergarten through 12th grade school district governing boards and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf of school districts and county offices of education.

As part of CSBA, the Education Legal Alliance (the “Alliance”) helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The Alliance represents its members, just under 800 of the state’s approximately 1,000 school districts and county offices of education, by addressing legal issues

of statewide concern to school districts. The Alliance's activities include joining in litigation where the interests of public education are at stake.

By submitting this Amicus Curiae Brief, CSBA asserts its vital interest in the outcome of this matter and in this Court's review of the important issue raised by Petitioners: whether the filing and posting of a facially valid Notice of Determination triggers the 30-day statute of limitations to bring a challenge under the California Environmental Quality Act, codified at Public Resources Code section 21000 et seq. and the CEQA Guidelines, codified in the California Code of Regulations, title 14, section 15000 et seq. (collectively referred to herein as "CEQA"). Amicus Curiae believes the following arguments will assist the Court in reaching a disposition in accordance with applicable state law, as well as sound policy: (1) the statutory construction and legislative history of Public Resources Code section 21167 indicates that the Legislature expressly intended the filing and posting of a facially valid Notice of Determination to trigger the 30-day statute of limitations and (2) the appellate court's decision, if upheld, will have a chilling effect on the construction and renovation of much-needed school facilities.

As correctly pointed out by Petitioners, the short and decisive statute of limitations for CEQA challenges provides certainty that a project which has not been challenged in the statutory timeframe may proceed. The

California legislature took the needs of project proponents into consideration in setting extremely short timeframes for legal challenges.

School construction is a recognized priority in California. School districts stand in the unusual position of being both the project proponent and lead agency on their projects; that is, they are not a public entity whose CEQA involvement lies in regulating permits, nor a for-profit entity whose CEQA interest lies in obtaining approval from a public entity. The practical impact of the underlying decision on California school districts is to force them to place contracting decisions on hold for some 6 months after issuing an NOD, or proceed at risk of having a construction project or land acquisition transaction stopped while underway.

Amicus Curiae submits that the plain language of and legislative history underlying Public Resources Code section 21167 is dispositive of the issues raised on appeal and undermine the appellate court's decision. For the reasons stated herein, Amicus Curiae contends that the legal basis of the appellate court's reversal of the trial's court's ruling to sustain Petitioners' demurrer without leave to amend was improper and, therefore, it's ruling should be reversed in favor of Petitioners.

II. STATEMENT OF THE CASE

A. FACTS AND PROCEDURAL HISTORY

Amicus Curiae hereby adopt and incorporate by reference the factual background and procedural history set forth in the Statement of Facts of Petitioners' Opening Brief on the Merits. (Pet. Op. Brief., pgs. 4-19.)

B. ISSUE PRESENTED

The appellate court's decision below raises a critical question which has a direct and immediate impact on California public school districts: can school districts, which are lead agencies on school construction projects, rely upon the legislatively mandated 30-day statute of limitations to challenge a CEQA determination where a timely and facially valid Notice of Determination was filed and posted? Amicus Curiae join Petitioners in answering this question in the affirmative. Stated otherwise, Amicus Curiae asserts that an appropriate interpretation of Public Resources Code section 21167 would clarify that a timely and facially valid Notice of Determination triggers the 30-day statute of limitations to challenge the matters set forth in the Notice.

The Petitioners' Opening and Reply Briefs examine in detail the application and interpretation of the various provisions of Public Resources Code section 21167 to the underlying facts at issue in this action, and thus that analysis will not be repeated here. The purpose of this Amicus Brief is to make the Court aware of the counterproductive and potentially

significant state-wide, direct and immediate effect of the appellate court's ruling on all public entity construction projects.

III. ARGUMENT

A. THE FILING AND POSTING OF FACIALLY VALID NOTICE OF DETERMINATION TRIGGERS THE 30-DAY STATUTE OF LIMITATIONS PROVIDED IN PUBLIC RESOURCES CODE SECTION 21167.

The primary question before the Court is whether the filing and posting of a facially valid Notice of Determination (“NOD”) triggers the 30-day statute of limitations set forth in Public Resources Code section 21167. Public Resources Code section 21152 governs the filing and posting of a NOD. Specifically, whenever a local agency has approved or has determined to carry out a project subject to CEQA, it “shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located.” (Pub. Res. Code, §21152(a).) The NOD must “indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.” (*Id.*) A NOD filed pursuant to Public Resources Code section 21152(a) “shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. . .

[and] shall remain posted for a period of 30 days.” (Pub. Res. Code, §21152(c).)

Public Resources Code section 21167 sets forth the applicable statute of limitations where a party seeks to challenge the approval of a project subject to CEQA. Section 21167 establishes several categories of challenges and the corresponding statute of limitations for each. Four of these categories govern challenges where a NOD (or Notice of Exemption) was filed by a local agency, but where the challenging party alleges: (1) that the agency has improperly determined whether a project may have a significant effect on the environment [subdivision (b)]; (2) that an environmental impact report does not comply with CEQA [subdivision (c)]; (3) that the agency improperly determined a project is not subject to CEQA [subdivision (d)], or that some other act or omission of the agency does not comply with CEQA [subdivision (e)]. For each of the types of challenges set forth in section 21167(b) – (e), the limitations period is 30 or 35 days and is triggered by the filing of a NOD. (See Pub. Res. Code, §21167(b) – (e), see also CEQA Guidelines, §15112(c)(1) [providing specifically that the 30-day limitations period applies where a party has filed a Notice of Determination pursuant to CEQA Guidelines, §15075 and §15094].)

By stark contrast, a 180-day limitations period applies in two narrow situations: (1) where it is alleged that a local agency carried out or a public agency approved a project that may have a significant effect on the

environment without having determined whether the project may have a significant effect on the environment [Pub. Res. Code, §21167(a)]; and (2) where no Notice of Exemption is filed following a lead agency's determination that a project or action is not subject to the provisions of CEQA [Pub. Res. Code, §21167(d)]. In this case, the parties and the appellate court acknowledged that section 21167(d) does not apply to the instant action. However, citing *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265, 271, the appellate court itself acknowledged that Section 21167(a) is applicable where the public agency in approving or undertaking a project having a significant effect on the environment made no attempt to comply with CEQA. (*Committee for Green Foothills v. Santa Clara County Board of Supervisors et al.* (2008) 161 Cal.App.4th 1204, 1234 [75 Cal.Rpt.3d 112], review granted July 23, 2008, No. H030986.) Thus, where a NOD is filed and posted pursuant to Public Resources Code section 21152, the 180-day statute of limitations period does not apply.

This interpretation is consistent with the well-settled legislative policy underlying the short statutes of limitations provided by Public Resources Code section 21167. As set forth on pages 21 and 22 of Petitioners' Opening Brief, this Court, as well as several courts of appeal, has recognized the need for prompt resolution of CEQA challenges. The CEQA Guidelines expressly advise those interested in enforcing its

provisions that challenges under CEQA are “unusually short.” (CEQA Guideline, §15112(a).) For where there has been notice and an opportunity to participate in a public process involving a project that may have significant impacts on the environment, as is the case in the instant action, there can be no argument that the shorter 30-day period should apply. The protracted 180-day period contemplates a situation in which the public agency failed to consider at all whether a project has an impact on the environment and simply moves forward with a project with no regard or consideration given to the mandates of CEQA.

Here, Amicus Curiae contend the appellate court misconstrued the meaning and application of Public Resources Code section 21167. The appellate court’s analysis, as applied, permits Respondent to escape the otherwise clear and concise 30-day statute of limitation period under the guise that a look into the substantive merits of the NOD is the appropriate method to determine which limitations period applies to Respondent’s claims. Such an interpretation is not contemplated by and is in fact contrary to the language and intent of Public Resources Code section 21167. Under this section, it is expressly clear that the filing and posting of the NOD, a public document, triggers the shorter and more definitive 30 and 35-day statutes of limitation. (Pub. Res. Code, §21167(b) – (e).) If Petitioners did not make the determinations stated in the NOD in compliance with CEQA, or if the determinations were not supported by

substantial evidence, then Respondent was charged with making such an allegation within 30 days of the filing and public posting of Petitioners' NOD.

On its face, Respondent's claim amounts to a challenge falling squarely within the shorter 30-day limitations period; namely that Petitioners made an incorrect determination under CEQA that no additional CEQA compliance was required to approve the Trails Agreement. Conversely, Respondent does not allege the prerequisites of a claim governed by the 180-day statute of limitations provided in Public Resources Code section 21167(a); i.e., that Petitioners approved a project without making any attempt to comply with CEQA. Thus, Amicus Curiae can discern no legal basis or policy justification for permitting Respondent to maintain an action which is clearly time-barred. Simply stated, the appellate court decision below will open the floodgates of delayed CEQA challenges that should have been brought within 30 or 35 days but for a project opponent's dilatory actions.

Amicus Curiae do not dispute that were a school district or other lead agency to approve a project without regard to CEQA at all, it is appropriate to apply the 180-day limitations period. That appears to be the evil that the extended limitations period was intended to address: where the public has no filed notice of a determination to proceed with a project, it is appropriate that the time to challenge be extended to allow discovery of the

project's existence. (See Pub. Res. Code, §21167(a) [providing that statute of limitations for failure consider CEQA at all commences 180 days from determination to approve a project or 180 days from commencement of project].) On the other hand, however, where the public is given notice of the determination to proceed with the project, and that CEQA has been complied with, the intentionally shorter challenge period provided in CEQA should control.

B. THE APPELLATE COURT'S RULING, IF UPHeld, WILL HAVE A CHILLING EFFECT ON THE CONSTRUCTION OF MUCH-NEEDED SCHOOL FACILITIES.

California K-12 school districts are in the midst of a long-overdue renovation and expansion process, under which state and local funding in the billions of dollars have been expended and have been set aside for the future. (See [California Department of Education] Fact Book 2008: Handbook of Education Information (2008), pp. 126-128 ["CDE Fact Book"], published at <http://www.cde.ca.gov/re/pn/fb/documents/factbook2008.doc> and relevant appended hereto as Attachment No. 1, see also [California Department of Education], School Facility Program Capital Outlay Report: Statistical and Fiscal Data (2008), p. 4, published on the CDE Website at http://www.documents.dgs.ca.gov/OPSC/Resources/Stats_Fiscal_Data.pdf#search=capital%20outlay%20report&view=FitH&pagemode=none -- 2008-

11-07 and relevant pages appended hereto as Attachment No. 2 [noting that as of October 2008, over \$4.4 billion dollars remain available for public school construction projects].) School construction is not, needless to say, a for-profit venture. Rather, it is a means to address inadequate student housing needs. For the reasons set forth below, Amicus Curiae urge that the appellate court's ruling, if upheld, would have a significant negative impact on public school construction programs and land acquisition.

1. There is a significant need for construction of adequate school facilities in California.

It is well recognized that there is a swiftly increasing number of inadequate public school facilities in the State of California. For example, Education Code section 17001 provides:

The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new school sites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that 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.

In addition to the well documented school facility modernization needs, according to a recent publication of the California Department of Education ("CDE"), the CDE Fact Book, for the period between 2007 and

2012, a reported 29,214 new classrooms need to be constructed to accommodate the state's growing K-12 student population. (See CDE Fact Book at pg. 126, Attachment No. 1 hereto.)

In recognition of and to address the severe need for public school facilities in California, the Legislature has provided a multi-faceted funding structure through its enactment of funding programs for voter-approved bonds which is codified in the Leroy F. Greene School Facilities Act, Education Code section 17070.10 et seq. These funding mechanisms provide grants for, among other things, (1) modernizing and rehabilitating aging and dilapidated schools [Ed. Code, §17074.10 et seq.; Cal. Code Regs., tit. 2, §1859.70 et seq.]; (2) construction of new school facilities [Ed. Code, §17072.10 et seq.; Cal. Code Regs., tit. 2, §1859.70 et seq.]; critically overcrowded schools [Ed. Code, §17078.10 et seq.; Cal. Code Regs., tit. 2, §1859.140 et seq.]; charter schools [Ed. Code, 17078.52 et seq. §; Cal. Code Regs., tit. 2, §1859.160]; and school districts that will suffer financial hardship in addressing its facility needs [Ed. Code, §17075.10 et seq.; Cal. Code Regs., tit. 2, §1859.80 et seq.].

In November 2006, nearly 57% of California voters approved Proposition 1D, a \$10.4 billion bond measure designed to assist with the state school systems' school facilities needs. (See CDE Fact Book at pg. 126, Attachment No. 1 hereto.) Based on the passage of Proposition 1D, as well as many other local bond measures state-wide, it is abundantly clear

that the citizens of California are relying on the state's public school districts to adequately house its students.

**2. The Appellate Court's Decision Will Cause
Uncertainty In The Complicated School Construction
Planning Process.**

The school construction planning process in California is both time consuming and heavily regulated. Typically, a school facility project consists of a multiple step process, including, as applicable: (1) School site selection and approval by CDE (Education Code section 17251(a); California Code of Regulations, title 5, section 14010 et seq.); (2) Phase 1 environmental hazards and geotechnical review and approval by the California Department of Toxic Substance Control ("DTSC") (Education Code section 17213.1); (3) Construction plan review and approval by the California Division of State Architect ("DSA") (Education Code section 17295); (4) Funding application review and approval by the Office of Public School Construction ("OPSC") and the State Allocation Board ("SAB") (Education Code, sections 17071.10 and 17071.75); (5) Compliance with CEQA (Public Resources Code section 21000 et seq.); and (6) Compliance with public contract competitive bidding (Public Contract Code section 20111 et seq.).

Unlike the typical builder or developer affected by CEQA through a permitting agency, school districts themselves are the lead agency for their projects. (See CEQA Guidelines, §15020 [noting that a public agency

“must meet its own obligations under CEQA”].) As such, delays resulting from late CEQA challenges can have particularly adverse impacts on school districts whose completion of the CEQA process and approval of a project may occur just prior to their taking action to enter into a construction contract or a land acquisition.

From a cost perspective, a six-month delay inserted into a construction program poses a very different impact than a 30-day delay. As set forth in the Construction Cost Index, published on the California Department of Education Website at <http://www.documents.dgs.ca.gov/resd/pmb/ccci/cccitale.doc>, the construction cost escalation since 2003 has averaged nearly 5%, (See CDE Construction Cost Index, appended hereto as Attachment No. 3.) This financial fallout resulting from school construction delays can be crippling for critically under-funded school districts. As an example, for a hypothetical \$200 million school construction program, a 6-month delay could be a cost impact of \$4.6 million at the 2007 rate of construction inflation (2.3%). (CDE Construction Cost Index, Attachment No. 3 hereto.)

Under CEQA, a superior court has the right to order a project that has begun without complying with CEQA to be suspended. (Pub. Res. Code, §21168.9(1)(b). Thus, any entity considering proceeding with a construction project where there is the possibility of a CEQA challenge

does so at risk for the 30- or 35- day period in prescribed in section 21167 (b) – (e), or the 180-day period established in section 21167(a) or 21167(b), if applicable. Given the complicated planning process for school construction, school districts must be cognizant of and confident in the applicable statute of limitations. Filing a NOD and awarding the contract after the challenge period expires inserts a month-long delay into this process. Leaving the risk of a CEQA legal challenge open for six months in any circumstance other than one where the district ignored CEQA entirely would have an obvious impact on risk and planning for school districts. In other words, putting a construction project or land acquisition on hold for some six months to avoid the risk of a challenge which should have been brought within 30 or 35 days would have a serious impact on the already complicated and heavily regulated school construction planning process.

As an example, in the typical school district construction process, project approval and authorization to proceed are issued by the Board of Education. Under CEQA, project approval must not be made until CEQA compliance is complete. (See e.g., CEQA Guidelines, §15090.) Project approval is followed by a NOD. (Pub. Res. Code, §21152; CEQA Guidelines, §15094.) After that point, however, the law only requires that typical (design-bid-build) projects be publicly bid for a minimum of two weeks, and after that the Board may enter into a contract for construction. (Pub. Con. Code, §20110 et seq.)

Were districts to be faced with planning for a 180-day waiting period to confirm that there will not be a CEQA challenge to their project, they would be forced to choose between the disruption to the planning process and the inflation to their construction cost, on the one hand, or proceeding at risk of liability to the construction contractor, on the other hand. A public project owner who is forced to suspend or terminate a construction contract faces significant financial exposure to the construction contractor. (See, e.g., *G. Keith Kenworthy v. State of California* (1965) 236 Cal.App.3d 378, 382 [stating the well-settled law that where an owner causes construction delay, not only is the contractor excused from performance, but is also entitled to damages resulting from the delay]; See also, Pub. Con. Code, §7102 and *Howard Contracting, Inc. v. G.A. Macdonald Construction Co., Inc. et al.* (1998) 71 Cal.App.4th 38, 49 [both standing for the proposition that a public agency cannot limit delay damages in a public construction contract].)

Respondents here do not claim that the NOD does not meet the technical requirements of Public Resources Code, section 21152 or CEQA Guideline section 15094. Rather, they essentially contend that one of the determinations in the NOD is not supported by the Petitioners' administrative record. (Resp. Ans. Brief., pgs. 20.) As required by Public Resources Code, section 21152 and CEQA Guideline, section 15094, the NOD states that an EIR was prepared, that findings were made under

CEQA, that mitigation measures were made a condition of approval, and that the project would not have a significant effect on the environment. Accordingly, Amicus Curiae assert that Respondent's attempt to avoid the shorter 30-day statutory period triggered by the timely filed facially valid NOD should not be permitted.

In sum, the crucial distinction between the 180-day and 30- or 35-day statute of limitation periods is between the failure to consider CEQA at all and/or starting a project without formal action by the governing board, on the one hand, and complying with CEQA via a NOD or Notice of Exemption, on the other. This is the distinction recognized by the subsections of Section 21167: the 180 day limitations period applies to the former (21167(a)), and the 30 or 35 day limitations period to the latter (21167(b) – (d).) In the first setting, the public has not been given notice of the planned action; in the latter setting, the challenge is to the content of the CEQA documents themselves. Amicus Curiae submit that the appellate court confuses the intent of the different limitations periods, and that California school districts would be inordinately damaged by the uncertainty created should they take the steps CEQA requires yet be open to challenge for 180 days.

IV. CONCLUSION

Based on the foregoing, Amicus Curiae urge the Court to reverse and remand the appellate court's decision. The appellate court

misinterprets and misapplies the plain language and meaning of Public Resources Code section 21167. It simply cannot be the intent of section 21167 that a project opponent can escape the clear and decisive 30-day statutory period triggered by a facially valid, timely filed and posted NOD by challenging, in a circular manner, the basis of the NOD. This attack is merely another way of challenging the merits of the determinations set forth in the NOD.

Moreover, if upheld, the appellate court's decisions would have a significant impact on California's public schools system. When school districts undertake the planning and implementation of construction programs, they do so with the understanding that the filing and posting of a facially valid NOD will delay their construction project by a mere 30 days. Were the underlying opinion to be upheld, it would be a simple matter for any opponent to claim that an agency did not comply with CEQA despite a valid NOD. A court should not be required, or allowed, to investigate the merits of CEQA compliance behind a NOD that is valid on its face, with the project proponents in the meantime being faced with the choice of absorbing the costs of delay or risking a court requiring them to suspend construction activities. Imposition of a longer, more uncertain, 180-day statutory period will pose significant planning and fiscal barriers to the cost-effective and timely construction of much needed school facilities.

WHEREFORE, Amicus Curiae pray that the Court find that a timely filed and posted NOD triggers a 30-day statute of limitation and reverses the appellate court decision in favor if Petitioners.

DATED: January 14, 2009

MILLER BROWN & DANNIS
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CLARISSA CANADY

By. 

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**Attorneys for Education Legal
Alliance of The California School
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CERTIFICATE OF WORD COUNT

The text of this brief consists of **4,616 words** as counted by the
Microsoft Word 2003 word processing program used to generate this brief.

Dated: January 14, 2009



Clarissa Canady

ATTACHMENT “1”

FACT BOOK 2008

Handbook of Education Information



California Department of Education

A Message from the State Superintendent of Public Instruction

California public schools encompass the most diverse, challenging, and promising student population in the country. The resources and programs associated with improving our education system are outlined in the *Fact Book*, an annual publication of the California Department of Education. This compendium of statistics and information on a variety of subjects and issues concerning education in California is designed to assist educators, legislators, and the general public and to aid reporters covering education.

The *Fact Book 2008* includes a wealth of data and background about programs in California public schools and at the California Department of Education. In particular, this edition contains an overview of our work to close the achievement gap and when available, links to specific programs located on our Web site.

I appreciate your interest in learning more about California's public education system, and I hope you find the *Fact Book 2008* helpful.

JACK O'CONNELL
State Superintendent of Public Instruction

School Facilities

During the past ten years, California's school-age population grew by more than one million students, an increase of 20 percent. To provide schools for this increased number of students and modernize older schools, districts have funded school facilities through a combination of several sources, including state bonds, local bonds, special taxes (Mello-Roos and parcel taxes), developer fees, and the federal Qualified Zone Academy Bond Program (QZAB).

Public School Data, 2007-08

Number of public schools	9,671
Number of classrooms	299,503
Number of classrooms over 25 years old	215,642 (72%)

Public Kindergarten Through Grade Twelve (K-12) Enrollment Growth, 2007-2011

(Based on Department of Finance 10/07 estimates of graded enrollment)

Estimated Public School Enrollment				
	2007-08	2012-13	Five-Year Change	Per Year
K-6	3,269,393	3,356,656	87,263	17,453
7-8	976,081	919,320	-56,761	-11,352
9-12	1,997,542	1,902,995	-94,547	-18,909
Total	6,243,016	6,178,971	-64,045	-12,808

New Construction and Modernization Needs, 2006-2011

	Five-Year Need	Per Year
Construction needs (50% state share)	\$8.7 billion	\$1.74 billion
Modernization needs (60% state share)	3.5 billion	0.7 billion
Total	\$12.2 billion	\$2.44 billion

New Classrooms Needed, 2007-2012 **29,214** **5,843**

(Total of new classroom construction needs; based on 25 pupils per grades K-6 class and 27 per grades 7-12 class) (16 per day)

Basic Construction Data

These are average costs based on the allowances provided in the state's School Facility Program. Costs will vary by location, the local building economy, and the type of facilities needed to support a district's educational program.

	Cost per student*	Students per school	Construction cost per school	Square feet per student	School site size (acres)**	Cost per square foot	Land cost at 25% of construction cost	Total cost (millions)
Elementary	\$15,797	600	\$9,478,200	71	9.6	\$222	\$2,369,550	\$11.85
Middle	\$16,966	1,000	\$16,968,000	85	21.9	\$200	\$4,242,000	\$21.21
High	\$20,603	1,800	\$37,085,400	92	44.5	\$224	\$9,271,350	\$46.36

*Costs based on twice the state share (as of September 28, 2006) provided in the "School Facility Program." Includes design fees, furniture, equipment, and construction.

**Based on the number of students per school and the guidelines in *School Site Analysis and Development, 2000 Edition*.

State General Obligation Bond History

1982	\$500 million	1992 (Nov)	\$900 million
1984	\$450 million	1994 (June)	\$1 billion (failed by 0.4%)
1986	\$800 million	1996 (Mar)	\$2 billion
1988 (June)	\$800 million	1998 (Nov)	\$6.7 billion (for 4 years)
1988 (Nov)	\$800 million	2002 (Nov)	\$11.4 billion
1990 (June)	\$800 million	2004 (Mar)	\$10 billion
1990 (Nov)	\$800 million	2006 (Nov)	\$7.33 billion
1992 (June)	\$1.9 billion		

Proposition 1D

In November 2006, the state's voters approved Proposition 1D, authorizing \$10.4 billion in bonds for the repair and modernization of kindergarten to university school facilities.

Proposition 1D was approved by 56.6 percent of the voters.

The funds from Proposition 1D for K-12 public schools break down as follows:

Project Allocations	Proposition 1D
New Construction	\$1.9 billion
Modernization	\$3.30 billion
Charter School Facilities	\$0.5 billion (\$500 million)
Career Technical Education	\$0.5 billion (\$500 million)
Joint Use Projects	\$0.029 billion (\$29 million)
Severely Overcrowded Schools	\$1 billion
High Performance Schools	\$0.1 billion (\$100 million)

The state bond funds are allocated to K-12 school districts, charter schools, and county offices of education through the State Allocation Board (SAB). The Office of Public School Construction (OPSC) in the Department of General Services functions as staff to

the SAB. Information regarding the allocation of Proposition 1D funds for K–12 schools can be accessed on the OPSC Web page at <http://www.opsc.dgs.ca.gov> (Outside Source).

The higher education funds are administered by the California Community College, California State University, and University of California systems.

Local School Bonds

Prior to the enactment of Proposition 39 on November 7, 1999, local school bonds had to be approved by two-thirds of a district's voters. Proposition 39 added the ability of districts to also seek local voter approval of 55 percent of the district's voters. Since the enactment of Proposition 39, the voters in school districts have approved over \$16.37 billion in local school bonds. Of this amount, \$10.18 billion was approved under the 55 percent vote requirements.

For more information regarding school facilities, contact the School Facilities Planning Division, at 916-322-2470. Additional information is also available on the School Facility Web page at <http://www.cde.ca.gov/ls/fa/sf>.

ATTACHMENT “2”



SCHOOL FACILITY PROGRAM

Capital Outlay Report

Statistical and Fiscal Data

December 16, 1998 through October 29, 2008

Prepared by the

Office of Public School Construction

Rob Cook – Executive Officer

Lori Morgan - Deputy Executive Officer

1130 K Street, Suite 400
Sacramento, California 95814
www.opsc.dgs.ca.gov

Status of Funds

SECTION 8 CURRENT FUNDING AVAILABILITY AS OF OCTOBER 29, 2008

This section represents SFP funding availability after the consent and special agenda were approved on October 29, 2008. These amounts include interests, accounts receivable, and other source funds made available. Amounts shown are in millions of dollars.

PROGRAM	BOND ALLOCATION	AVAILABLE AS OF OCTOBER 29, 2008
Proposition 1D		
New Construction	\$1,900.0	\$712.1
Seismic Repair		199.0
Modernization	3,300.0	1,172.2
Career Technical Education	500.0	274.0
High Performance Schools	100.0	80.2
Overcrowding Relief	1,000.0	460.0
Charter Schools	500.0	37.0
Joint Use	57.5*	0.0
Subtotal	\$7,357.5	\$4,449.6
Proposition 55		
New Construction	\$4,960.0	\$2,270.8
Energy		0.2
Small High Schools		
Modernization	2,250.0	51.1
Small High Schools		
Critically Overcrowded Schools—	2,440.0	0.0
Reserve (15 Percent Maximum)		50.0
Charter Schools	300.0	
Relocation/DTSC Fees		
Hazardous Material/Waste Removal		
Conversion Increase Fund		
Joint Use	65.5**	0.0
Subtotal	\$10,015.5	\$ 573.1
Proposition 47		
New Construction	\$6,250.0	\$2,270.8
Energy		0.2
Modernization	3,330.0	0.0
Energy		0.0
Critically Overcrowded Schools	1,700.0	0.0
Reserved		151.0
Charter School	100.0	0.5
Conversion Increase Fund		
Joint Use	50.0	0.5
Subtotal	\$11,400.0	\$ 738.6
School Facility Program Total	\$28,773.1	\$5,761.3

* Original bond allocation of \$29 million augmented by \$21 million from Prior Bond Funds at the June 27, 2007 SAB meeting and \$7,593,802 at the July 23, 2008 SAB meeting.

** Original bond allocation of \$50 million augmented by \$15,547,233 from the State School Building Aid Fund at the February 28, 2007 SAB meeting.

ATTACHMENT “3”

California Construction Cost Index (CCCI)

Month	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
January	4983	4869	4620	4339	3978	3939	3859	3862	3746	3772	3685
February	4983	4868	4603	4362	4039	3939	3856	3867	3758	3764	3691
March	4999	4871	4597	4360	4034	4021	3863	3867	3846	3751	3695
April	5004	4872	4600	4393	4125	4002	3843	3906	3846	3752	3700
May	5023	4886	4599	4403	4125	4007	3942	3908	3846	3748	3714
June	5065	4842	4593	4421	4192	3988	3943	3885	3857	3744	3715
July	5135	4849	4609	4411	4194	3989	3944	3868	3855	3745	3718
August	5142	4851	4616	4399	4205	3988	3939	3869	3853	3739	3717
September	5194	4942	4619	4533	4309	3993	3939	3862	3858	3742	3732
October	5393	4943	4867	4554	4310	3994	3940	3861	3861	3748	3786
November	5375	4978	4891	4587	4325	3988	3941	3863	3861	3745	3780
December	5322	4981	4877	4614	4339	3980	3941	3860	3862	3745	3772
Annual % ^		2.3%	5.6%	6.3%	9.1%	1.0%	2.1%	-0.1%	3.1%	-0.7%	2.4%

The California Construction Cost Index is developed based upon Building Cost Index (BCI) cost indices for San Francisco and Los Angeles produced by Engineering News Record (ENR) and reported in the second issue each month for the previous month. This table is updated at the end of each month.

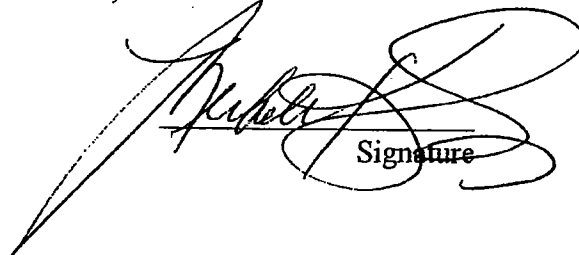
The ENR BCI reports cost trends for specific construction trade labor and materials in the California marketplace.

This page last updated: 1/7/2009

Executed on January 14, 2009, at San Francisco, California.

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