



School Business Law Update

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K-12 FACILITIES INSPECTION AND REPAIR REQUIREMENTS AS A RESULT OF THE WILLIAMS LITIGATION

As you are no doubt aware, the Legislature enacted four bills as urgency legislation to implement the settlement of the *Williams* litigation. Two of those bills put into place programs relating to the condition of K-12 school facilities, SB 550 (codified at Cal. Educ. Code sections 1240 and 17014, 17032.5, 17070.75, 17089) and SB 6 (codified at Cal. Educ. Code sections 17592.70 through 17592.73 and 41207.5). Districts with schools ranked in Deciles 1 through 3 on the 2003 Academic Performance Index need to be aware of the requirements and deadlines for implementing these programs. In addition, Districts using School Facilities Program or Deferred Maintenance funding have certain ongoing inspection requirements.

SB 550 - COE ANNUAL INSPECTIONS (SCHOOLS IN DECILES 1-3 ONLY)

SB 550 requires County Offices of Education to annually visit the schools in the county that are ranked in Deciles 1 through 3 (2003 API) to determine the status of the condition of a facility that poses an emergency or urgent threat to health and safety of pupils or staff, as well as the accuracy of data reported on the school accountability report card concerning the safety, cleanliness and adequacy of school facilities, including "good repair." "Good repair" is defined to mean that the facility is maintained in a manner that assures it is clean, safe and functional as determined under an "Interim Evaluation Instrument" developed by the Office of Public School Construction (OPSC).

These inspections are to be carried out during the first four weeks of the school year, except that for this initial year, they must be completed by mid-May. In most counties, the inspection program process has been developed and inspections will be underway shortly. The inspections will be based on the OPSC "Interim Evaluation Instrument" and at least 25% of the visits are required to be unannounced. County offices of education will report the results of the site visits to school district governing boards.

For questions concerning county office facilities site visits, contact the following:

- Inyo County Office of Education: Dan Munis, Deputy Superintendent
- Kern County Superintendent of Schools: Jenny Hannah, Director, Facilities and Property Management Services
- Los Angeles County Office of Education: Magdalena Socea
- San Luis Obispo County Office of Education: Mary Jarvis, Assistant Superintendent, Business Services
- Santa Barbara County Office of Education: Carol Johansen, Assistant Superintendent, Instructional Services
- Tulare County Office of Education: Rich Graham, Administrator, General Services
- Ventura County Superintendent of Schools: Roy Haanpaa, Safety Specialist & Inspector, Ventura County Schools Self-Funding Authority

**SB 6 - ONE-TIME SCHOOL FACILITY NEEDS
ASSESSMENT PROGRAM (DECILES 1-3 ONLY)**

SB 6 consists of two programs. The first is the School Facilities Needs Assessment Grant Program (SFNAGP). This is a mandated one-time facilities assessment program unrelated to the County Offices' annual inspections. This program provides a one-time grant of \$10/ADA or a minimum of \$7,500 for each school site within a district in Deciles 1 through 3 to be used to assess facility needs and make the identified repairs. A district must file a Certification of Eligibility with OPSC listing ineligible schools (built on or after January 1, 2000) in order to receive the grant funds. A Web-Based Progress Report Survey (one page) must be submitted to OPSC by April 29, 2005, detailing the progress made in accomplishing the assessments.

School site assessments must be conducted by "qualified" inspectors, which emergency regulations adopted by the State Allocation Board currently define as independent third parties with general knowledge of school facilities construction, operation and maintenance who are either (1) licensed under California law as architects, general contractors, or engineers or (2) have a minimum of three years experience with cost estimation and building systems life cycle analysis. All required school site assessments must be completed and reported to OPSC via the Web by January 1, 2006. A Web report of all expenditures made under this program is due to OPSC by September 1, 2006. SB 6 contains a list of minimum information which the assessments must provide.

County superintendents of schools in many counties will provide assistance in some form to school districts in locating qualified inspectors or otherwise complying with this legislation.

SB 6 – EMERGENCY REPAIR PROGRAM

The second program under SB 6, known as the Emergency Repair Program, provides reimbursement funding for the repair of any emergency facilities needs that were contracted to be corrected after September 29, 2004, identified during the assessments referred to above, or afterwards. Emergency facilities needs are defined as structures or systems that are in a condition that pose a threat to the health and safety of pupils or staff while at school. Up to eight hundred million dollars (\$800,000,000) in annual increments of One Hundred Million (\$100,000,000) will be apportioned for this program. Funds from this program are designed to supplement, not supplant, existing funds available for maintenance of school facilities.

Grant funds can be utilized to repair or replace such things as gas leaks, non-functioning heating, ventilation, fire sprinkler and air-conditioning systems, electrical power failures, major sewer line stoppages, major pest or vermin infestations or broken windows, doors or gates that pose a security risk as well as to abate previously undiscovered hazardous materials which pose an immediate threat. They may not be used to make cosmetic repairs.

Both programs are administered by the SAB. When finalized, the regulations for administration of these programs can be found at California Code of Regulations, Title 2, sections 1859.300 and following.

SCHOOL FACILITIES INSPECTION SYSTEMS (ALL SCHOOLS)

In addition to the third party inspections described above, school districts participating in the State School Facilities Program or receiving funds under the State Deferred Maintenance Program for fiscal years after 2004-05 are required to establish a “Facilities Inspection System” to insure that all schools within the district are maintained in good repair (the same good repair standard as discussed above). The one-time School Facilities Needs Assessment described above is to serve as the baseline for this Facilities Inspection System. (Education Code section 17070.75).

If you need further information on the above topics, do not hesitate to contact our office.

— *Christopher Burger*

School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.