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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

11 ELIEZER WILLIAMS, et al.,
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13 Plaintiff,
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15 v.
16 STATE OF CALIFORNIA, et al.,
17
18 Defendant.

Case No. 312236

**EXPERT WITNESS DECLARATION RE
DR. THOMAS G. DUFFY**

Date Action Filed: May 17, 2000

18 I, PAUL B. SALVATY, declare as follows:

19 1. I am an attorney licensed to practice law in the
20 State of California. I am a partner at the law firm of O'Melveny
21 & Myers LLP, counsel of record for Defendant State of California
22 ("State Defendant") in this action.

23 2. State Defendant has provided a list of persons
24 whose expert opinion testimony the State intends to offer at
25 trial of this action, either orally or by deposition testimony.
26 The list includes Dr. Thomas G. Duffy, to whom this declaration
27 refers.

28 3. Dr. Duffy has agreed to testify at trial.

1 4. Dr. Duffy will be sufficiently familiar with the
2 pending action to submit to a meaningful oral deposition
3 concerning the specific testimony, including any opinions and
4 their bases, that Dr. Duffy is expected to give at trial.

5 5. Dr. Duffy's fee for providing deposition
6 testimony, consulting with State Defendant, conducting research
7 and other activities undertaken in preparation of the attached
8 report is \$ 225 per hour.

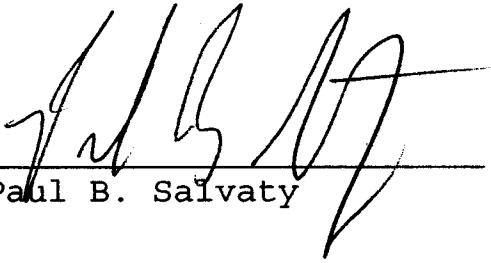
9 6. Pursuant to Section 2034(f)(2)(A) of the
10 California Code of Civil Procedure, attached hereto as Exhibit A
11 and incorporated herein by reference is a *curriculum vitae*
12 providing Dr. Duffy's professional qualifications.

13 7. Attached hereto as Exhibit B and incorporated
14 herein by reference is Dr. Duffy's expert report. Pursuant to
15 Section 2034(f)(2)(B) of the California Code of Civil Procedure,
16 the following is a brief narrative statement of the general
17 substance of the testimony that Dr. Duffy is expected to give at
18 trial. In his expert report, Dr. Duffy addresses the education
19 infrastructure in the State of California. Dr. Duffy provides
20 analyses and an historical overview of California's experience
21 with facility issues. Dr. Duffy identifies some of the relevant
22 economic, social, and political issues that have impacted
23 educational facilities in California. Dr. Duffy also addresses
24 the current and potential future status of facilities issues in
25 California, including issues raised by plaintiffs' experts in
26 their own facilities-related expert reports. The foregoing
27 statements are only a general summary of the issues and
28 conclusions discussed and documented more fully in Dr. Duffy's

1 report.

2 I declare under penalty of perjury under the laws of
3 the State of California that the foregoing is true and correct.

4 Executed at Los Angeles, California, this 18th day
5 of April, 2003.

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8 Paul B. Salvaty

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THOMAS G. DUFFY, Ed.D.

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EMPLOYMENT EXPERIENCE

April 2000 – Present

LEGISLATIVE ADVOCATE
Murdoch, Walrath & Holmes

Serving a variety of school districts and private sector clients on school facility funding issues, site acquisition, developer fee negotiations and facility legislation and regulations.

1988 – April 2000

DISTRICT SUPERINTENDENT
Moorpark Unified School District

Served as the Chief Executive Office having responsibility for leadership and oversight of Instructional, Personnel, and Business Services in a rapidly growing school district of approximately 7,500 students. Accountable to the Board of Education for all educational and extra-curricular programs and activities of the nine schools of the District. Responsible for the drafting and publication of the Agenda of the Board of Education and the posting of all regular and special open meetings and closed sessions of the Board; the latter requiring advisement to the Board regarding compliance with the Ralph M. Brown Act, and the exceptions to the open meeting laws found in the Education Code. Advisor to the Board in the collective bargaining process in coordination with legal counsel. Responsible for direct oversight of facility planning and financing, site acquisition and school construction for the District. Planned and built seven schools including Moorpark High School, which became the National Academic Decathlon Champion in 1999. Direct responsibility for the District self-insurance programs, serving as the District management representative and Vice Chairperson of the Coastal School Employees Benefits Organization, and the Ventura County Schools Self-Funding Authority, which administers the property, liability and Workers' Compensation programs of a majority of districts in Ventura County. Responsible for District asset management.

1985-1988

ASSISTANT SUPERINTENDENT – BUSINESS SERVICES
Moorpark Unified School District

Served as the Chief Financial Officer for the School District. Responsible for the District budget, purchasing, transportation, building maintenance and operations, grounds and food service.

Intensive work and responsibility in the area of financing and construction of school buildings, including liaison with the State Department of Education, Office of Local Assistance and the State Allocation Board relating to the State funding of District school construction and modernization projects. Service as the liaison of the District to local residential and commercial and industrial developers for the purposes of negotiating developer fee agreements and developer donations and resolving related issues.

1983-1985

COORDINATOR, SCHOOL FACILITIES
Ventura County Superintendent of Schools Office

Primary responsibilities included planning and financing of school facilities, management of the bidding and awards procedures, administration of construction contracts and project budgets, acquisition of furniture and equipment and the occupancy of new school buildings. Responsibilities included providing direct services and advisement to school districts in Ventura County regarding the State school construction, modernization, emergency classroom and deferred maintenance programs.

1980-1983

FACILITIES CONSULTANT AND TEACHER
Ventura County Superintendent of Schools

Responsibilities in the Business Office included development of a master plan for special education facility construction, establishing the master application file with the Office of Local Assistance, Department of General Services for the County Office to support the need of state funding for school site acquisition and facility construction, preparing funding applications for each project, management of project bidding and award of contracts, and the oversight and coordination of project construction; these responsibilities required continuous communication with the Office of Local Assistance, the State Allocation Board, the Department of Education and the Office of the State Architect. Responsibilities in the Special Education Office included working with Special Education and Regional Occupational Program Staff for purposes of establishing program goals and objectives, consensus building and the resolution of conflicts resulting from the implementation of the goals and objectives. Special education responsibilities included serving as the teacher of a County special day class for the orthopedically handicapped students at Rio Mesa High School, and the coordination of the mainstreaming of students into the regular instructional program.

1980

SPECIAL EDUCATION CONSULTANT
Ventura County Superintendent of Schools Office

Responsibilities included planning and development of the governance structure for the Ventura County Special Education Consortium (the SELPA), planning and conducting parent awareness workshops, drafting documents dealing with special education, including a complaint procedure and a handbook/resource guide for parents of special education pupils, and conducting public meetings dealing with the topic of awareness of pupils with special needs.

1971-1980

TEACHER, ORTHOPEDICALLY HANDICAPPED PROGRAMS

Ventura County Superintendent of Schools Office

Charged with the responsibility of establishing the orthopedic unit at Rio Mesa High School which included duties of instruction, initiation and supervision of the mainstreaming program and faculty liaison. Previous assignments included serving as primary and intermediate teacher at Douglas Penfield School and pre-school/kindergarten teacher at the Cerebral Palsy School.

FACULTY MEMBER – PART TIME, DEPARTMENT OF SPECIAL EDUCATION

California State University, Los Angeles

(On leave from Ventura County Superintendent's Office, 1976-77)

Responsibilities included instruction in graduate level courses, supervision of student teachers, coordination and supervision of an instructional lab, writing federal and state grant proposals, and guest lecturing on the subject of law relating to special education and the disabled.

CALIFORNIA CREDENTIALS

Administrative Services and Standard Elementary, with a specialization to teach the orthopedically handicapped.

EDUCATION

1985-1992

University of Southern California, Ed.D.
Education Policy, Finance and Business

1976-1977

California State University, Los Angeles, M.A.
Education Administration

1972-1976

California State University, Los Angeles, Credential
Specialization

1968-1971

California State University, Long Beach, B.A. History
Standard Elementary Credential

PROFESSIONAL/ASSOCIATION RESPONSIBILITIES

Chairperson, Facilities Group for the Joint Legislative Committee to Develop a Master Plan for
Education, Kindergarten through University

Past Chairperson, Ventura County Schools Self-Funding Authority (VCSSFA)

Past Chairperson, Coastal School Employees Benefits Organization (CSEBO)

Past Chairperson, Superintendent's Policy Council of the Ventura County Special Education
Local Plan Area

Past Chair, Coalition for Adequate School Housing

Founding Board Member, National Committee for Adequate School Housing

Past Chair, Schools Legal Defense Association

Past Board Member, California Association of School Business Officials (CASBO)

COMMUNITY INVOLVEMENT

Past Chairperson, Boy Scouts Annual Fund Development Campaign

Past Chairperson, Moorpark Area United Way Campaign

Past Chairperson, Allocations Committee, United Way of Ventura County

Religious Education Teacher, Holy Cross Church, Moorpark, CA & St. James Parish, Davis, CA

REFERENCES

Nancy Carroll, Superintendent
Ocean View Elementary School District

Mario Contini, Superintendent
Fillmore Unified School District

Richard J. Currier, Attorney
Currier & Hudson, San Diego, California

David Doomey, Assistant Superintendent
Capistrano Unified School District

Richard Duarte, Superintendent
Oxnard School District

Anne Mallory, Assistant Superintendent
Imperial County Office of Education

Dan Vinson, Superintendent
Rancho Santa Fe School District

James Wiederschall, Attorney
Los Angeles, CA

EXPERT REPORT OF
THOMAS G. DUFFY, Ed.D.

EDUCATIONAL FACILITIES ISSUES IN CALIFORNIA

Williams v. State of California

April 2003

Qualifications And Introduction

I serve as the chief legislative advocate for the California's Coalition for Adequate School Housing (C.A.S.H.) and am a consultant specializing in school facilities and funding issues. I am a partner in the firm, Murdoch, Walrath & Holmes, which I joined in April 2000. My breadth of knowledge and expertise includes state funding, legislative and regulatory processes and issues relating to school facilities. I am a former practitioner in the education industry. I served for 12 years as the District Superintendent for the Moorpark Unified School District and, beforehand, served three years as the Assistant Superintendent of Business Services for that district. Additionally, I served as the Coordinator of School Facilities and as the Special Education Consultant, and was a former teacher for orthopedically handicapped pupils for the Ventura County Superintendent of Schools Office. I also was a classified employee for the Los Angeles City Schools.

I earned my Bachelor of Arts from the California State University at Long Beach, my Credential Specialization and my Master of Arts in Education Administration from the California State University at Los Angeles, and my Doctorate of Education in Education Policy, Finance and Business from the University of Southern California.

In this litigation, I have been asked to provide information and my opinions regarding K-12 education infrastructure in California. Specifically, I have been asked to provide analyses and an historical overview of California's experience with facilities issues over approximately the past quarter century, as well as my opinions concerning some of the relevant economic, social and political issues that have impacted educational facilities in California during that same time frame. I also have been asked to provide my opinions about the current and potential future status of facilities issues in California, including regarding issues raised by plaintiffs' experts in their own facilities-related expert reports.

Historical Background

In the 1970s, education policy for grades K-12 in California began to change. The forces which initiated and caused change were founded in emergent revenue and taxation issues within California, and the politics of the public sector labor unionization movement which swept through the United States in the 1960s and 1970s and took hold in California.

The revenue issue emerged first with the California State Supreme Court decision in *Serrano v. Priest* in 1970. John Serrano, the father of a student in a public school, sued State Treasurer, Ivy Baker Priest, challenging the state's school financing law. Mr. Serrano alleged that the property tax-based financing system created a significant disparity in quality of the educational programs between school districts such as Baldwin Park, a low-wealth district, and Beverly Hills, a high-wealth district. The Supreme Court determined that the local property tax based K-12 school finance system, which had existed for 120 years, was unconstitutional under the California Constitution. The state was directed by the decision to change education finance policy so as to eliminate the disparity between school districts' level of income per student.

As the Legislature took action to abide by the direction of the *Serrano* decision, it was also faced with the challenge of a demand to change the collective bargaining policy in California. Existing statute, prior to 1976, referred to as the Winton Act, required that school district officials and boards "meet and confer" with the representatives of organized labor on matters of interest. Beginning in 1976 and through 1977, school districts were required by the new Rodda Act to meet and bargain with the designated representatives of teachers and other non-management certificated employees and with representatives of non-management classified personnel. The advent of the collective bargaining statute brought with it tension and conflict emanating from the demands of labor for higher salaries and benefits, and the demand to negotiate working conditions, such as class size limits, which when granted increased expenditures or shifted expenditures from other competing needs within the school district, such as maintenance and building and grounds repair accounts. School district general fund budget decisions of boards of education experienced great scrutiny by teacher and classified employee associations after passage of the Rodda Act.

The taxation control issue that began in the 1970s and culminated with the passage of Proposition 13 in June 1978 had a dramatic impact upon K-12 public education. Proposition 13, known as a property tax revolt, reflected the revulsion that taxpayers had for the steadily increasing tax on property which was being experienced in the mid-1970s. Proposition 13 made it illegal in California to have an "*ad valorem*" tax, that is, a tax based upon the value of property. The proposition provided a substitute means of creating a tax on property through a new parcel tax that was provided within the constitutional amendment. The parcel tax required a 2/3 vote of the electorate just as a general obligation bond measure would have required. Parcel taxes by their nature are a flat tax which produce less revenue over time than bond measures. It was made clear to school district officials that the public would look at any proposed new tax with a jaundiced eye. A consequence of Proposition 13 was the dependency of K-12 education upon the State for general purpose revenue, that is, General Fund income. This came as a result of the decrease in revenues from local property taxes which not only impacted the funding of schools for operating revenues but also created revenue shortages for police, fire, library and other services provided by local government.

In the wake of Proposition 13 and due to this substantial impact on local government services, the Legislature dramatically changed the funding mechanism for K-12 revenue limits by providing the greater share from state revenues and a much smaller share to school districts from local property taxes. This change was an inversion of the ratio of state and local sharing of public education costs. The legislation that created this change allowed greater amounts of local

property taxes to go to other local agencies that provided vital services. School districts then became dependent upon the state's education budget for the largest portion of their revenue stream and, therefore, became vulnerable to the swings in state revenues from income and sales taxes which grow with a robust economy and recede in times of recession. In the past, before Proposition 13 and the legislation which changed the K-12 funding model, school districts were essentially immune to economic recession in that property taxes were the foundation for their general fund, and property taxes were stable sources of income.

An important but sometimes-forgotten impact of Proposition 13 is the continuing competition for local dollars between counties and cities and school districts. Proposition 13 diminished local tax revenues for all parties and required the Legislature to redistribute these lesser amounts while funding, as noted, more of the local education services. That local competition has found new areas for contests to take place as seen in, among other areas, reduced crossing guard services by cities, the demand by cities and counties for school districts to pay "fees" to them, and to pay for perceived environmental impact resulting from the building of new schools, such as funding various mitigation measures including traffic signals, road improvements and freeway on-ramps. The scarcity of local funding has created pitched battle between local agencies which is still occurring in 2003.

In the latter part of the 1970s, after the passage of Proposition 13 and with the recognition that collective bargaining had made a tremendous impact on school district budget decision making, the Legislature began to listen to the complaints and needs articulated by school district officials and governing boards and produced legislation which was intended to help in an era of new K-12 population growth. The Coalition for Adequate School Housing (C.A.S.H.) was formed in August 1978, less than two months after the June election that brought forth the passage of Proposition 13. A new statute, the Leroy F. Greene Lease-Purchase Law, which became law in 1976 but for the most part had been dormant, became ever more important for school districts needing funds to buy land and build new schools; the program was intended to be a lend-lease where districts "leased" a project from the state which it then purchased over time by repaying the funds lent by the state. A new era began at this time unbeknownst to those that created the law or operated the programs; the state began to take over the responsibility for funding of 100 percent of new school projects.

In response to the growth that began in the 1970s, many school districts began to respond by acquiring what were identified as temporary classrooms. Using the California Environmental Quality Act (CEQA), districts working with cities and counties would sometimes negotiate with residential developers to provide temporary housing of pupils through portable buildings or to receive funds from developers to lease temporary buildings and to furnish them until such time that permanent schools could be built.

In 1978, the state Legislature responded to school district needs to manage growth with Senate Bill 201, which provided a statutory base upon which school districts could demand "school impact fees" from residential developers in order to address the new students emanating from new homes. Through SB 201, those fees were imposed through a city or county having jurisdiction over the development, but could not be imposed by the district itself. Varying levels of fees were seen in California, with high fees being imposed by some cities and counties such as

in the San Diego area to the imposition of no fees at all in some areas including unincorporated portions of Los Angeles County. It became common for districts to propose developer agreements with developers upon whom a fee would be imposed by a city or county in order that the district could use the funds to pay for permanent rather than temporary buildings. SB 201 specified that the developer fees would be used for leases and rents whereas a voluntary agreement entered into by a developer with a school district could allow for the expenditure of fees in any manner agreed to by the parties. Some districts used the projection of fee income over the course of development of one or more housing projects to serve as the basis for a "lease-purchase" of a permanent school project or for the issuance of non-voter approved bond debt through the issuance of "Certificates of Participation" (COPs). Lease purchase contracts and COPs were structured in such a way as to circumvent the state constitutional prohibition against school districts borrowing funds for more than one year.

In 1979, the Legislature again responded to the needs of local schools through the creation of the Deferred Maintenance Program. The effect of the collective bargaining statute upon budgetary decisions made at the district board level and the uncertainty of revenue sources had caused districts to begin to spend less of their general purpose revenue in areas such as major maintenance needs. The Deferred Maintenance Program provided an incentive to districts by the offering of \$1 for each district \$1 transferred to a Deferred Maintenance Fund up to a half percent of the district's expenditure side of its general fund budget. A district opting to enter the program would therefore have, in any given year, an amount equal to 1 percent of its general fund expenditures in order to deal with major maintenance issues within the district. The program required that districts plan maintenance needs over a five-year period by identifying the district projects to be addressed each year. The program recognized that priorities may change for each district and, therefore, flexibility in adding to or accelerating a project's priority was given to the district.

The Deferred Maintenance Program was originally funded through the proceeds of the loan payment by school districts that had received state loans to fund the construction of schools under the State's school building program of 1952. These funds, paid in annual increments, began to diminish in the 1980s, causing the need to supplement the Deferred Maintenance Fund with a state general fund transfer. Therefore, the program became wholly dependent upon a general fund appropriation, and remains so today. Funding of the program is a current subject of debate in the Legislature, as that body considers fundamental policy goals in education and other areas of state support. The new State K-University Master Plan, discussed below, proposed annual per pupil grants to be paid to meet major maintenance and modernization needs of districts through a phased funding method. This concept recognizes the need to address major facility maintenance needs as modernization and repair issues. The new modernization requirements of additional local contributions, 40% rather than 20%, while the state's match remains essentially the same dollar amount as before, as discussed below, moves in the direction of a focused approach to meeting major repair needs of schools through a thoughtful, deliberative plan of action. The more realistic access to local matching funds through Proposition 39 bonds, also discussed below, was an essential component to the new 60/40 Modernization Program; districts may include maintenance and repair (e.g., sink and toilet replacement, toilet stalls, classroom doors, blackboard replaced with new white marker boards), major maintenance (e.g., roofing, heating and air conditioning unit replacement, playground

replacement or repair etc.), Deferred Maintenance projects match (meeting program requirements) and Modernization match. The various levels of maintenance are not easily defined, but most if not all can be included in a list of projects under a Proposition 39 list of projects in a bond election.

By the beginning of the 1980s, the state's Lease Purchase Program had become the backbone of K-12 school facility construction with the state funding 100 percent of a project including planning costs, site acquisition, building construction and furnishings for school buildings. California during this time had been successful in a legal matter and had made over \$300 million available to K-12 schools through what was known as the Tidelands Oil Revenue Fund. In 1979-82, these funds were used for new construction projects. As the state general fund began to feel the fiscal effects of Proposition 13, however, a large portion of the Tidelands funds was committed to other state needs and, thus, diminished the funds available for building schools. This action was the impetus for the first in a long series of state general obligation bonds for new construction which was placed on the ballot in November 1982 for approximately \$500 million and required only a simple majority vote of the electorate in that 2/3 vote of each house in the Legislature was required to send it to the Governor in order to be placed on the ballot. This was the first in a succession of bonds for facilities purposes, the major successes of which have been realized in the past several years. Appendix A details the state-wide bond issues of major importance in California with the exception of Proposition 47. Appendix B provides information about Proposition 47.

This bond, however, provided for a new program which was referred to as the School Rehabilitation Program. It began to allow for the "modernization and repair" of schools which were at least 30 years old. The program was written in such a way as to maintain the original approval of the building plan by the Office of the State Architect (DSA) with the caveat that the program would limit the costs of the renovation to no more than 25 percent of the replacement value of the buildings and that major structural elements would remain untouched. This became a popular program in that there were many aging schools in California and no source of local funding assistance other than the 2/3 vote parcel tax. This program also was 100 percent state-funded.

The demand for state modernization funding in the early 1980s contributed to the size of future state general obligation bonds and the ear-marking of specified amounts of each bond for the Modernization Program. The C.A.S.H. organization and others consistently communicated the need to identify bond funds to address the growing number of aging schools in California. This focus upon the needs of districts to address the repair or upgrading of major building systems notwithstanding the need to upgrade old classrooms and other areas of school buildings led to the recognition that some buildings may not be structurally adequate. The state responded. Specifically, a state program was created to allow districts to receive additional funding to structurally repair unsafe buildings or to abandon and demolish such facilities if repairs were too costly and to replace them with new buildings. Today that program is called the Facility Hardship Program.

The growth of the K-12 population in the 1980s exerted pressure on school districts, and those entities used several means to house pupils. Districts sought revenue through developer

agreements. They would maximize their eligibility for new construction and modernization funds through the state program, and they would borrow funds in order to meet their needs. Some districts began to hold parcel tax elections although the success rates were low. One district in San Diego County had agreed with a residential developer to create a mechanism for the developer as a property owner to consent to a parcel tax upon the privately owned, undeveloped land in advance of acquiring a right to subdivide the land and to build homes. The district took the concept to court in order to determine if it would be invalidated by the judge. It was not invalidated and the concept began to yield parcel tax revenue to the district. The Legislature responded to this by proposing through the Mello-Roos statute that this become law for any district in similar circumstances to use in California. Through Mello-Roos an additional tool was provided to districts for meeting growth needs under certain circumstances.

In the early to middle 1980s, some residential developers resisted higher level fees and sought support in the courts. School districts relied upon cities and counties to defend such court action in that the cities and counties had imposed the fees being challenged. The Legislature responded to the complaints of the development and school communities by holding various hearings on the issue of fee levels and the adequacy of existing statute. This was helpful to those involved in K-12 public education and to the C.A.S.H. organization that began to articulate the need for another state bond in 1984. A bond was placed on the ballot in November 1984 in the amount of \$450 million. This bond was successful and provided for 100 percent of the cost of new construction and modernization projects.

Seeking alternative means of dealing with the growth of the K-12 population and recognizing diminished sources of state bond funds and other capital sources, some districts implemented the option of what is now called Multi-Track Year Round Education (MTYRE). This was done in smaller districts such as the Oxnard School District in Ventura County and very large districts such as the Los Angeles Unified School District. Because state capital outlay dollars were so precious and recognizing that MTYRE school districts appeared to operate in such a fashion as to provide adequate instruction for children, the state through legislation offered by Senator Gary Hart began to offer "construction avoidance funding" for districts which offered the option of running an MTYRE program as opposed to seeking state capital construction funding. Under this model, a district would receive a per-pupil grant amount equal to the eligibility the district chose to forego under the state Lease-Purchase program. MTYRE districts enjoyed additional general fund dollars under this model and non-MTYRE districts which had growth eligibility in theory would find that greater capital construction funds were available.

In 1986, the pressure of 100 percent state-funded schools, the disparity of developer fees throughout the state and the need to address educational programs that were beyond those specifically contemplated by the state's Lease Purchase Law provided the impetus for a package of bills that were three in number and linked: AB 2926 (Sterling), SB 327 (Greene), and SB 2068 (Seymore). The state recognized the need to capture in some way the developer fees that were being generated at the local level so as to provide state bond funds to communities imposing such fees through a "match" mechanism. Developers had a need to curtail the level of fees and to predict fee levels into the future as they developed financing information for their *proformas* relating to residential development projects. And school districts had needs of

enhancing the state program funding levels, as well as adding new programs and authority to impose developer fees independent of cities and counties.

This trilogy of legislation had a tremendous impact upon the state Lease Purchase Program and the local school district control of developer fee administration. After January 1, 1987, the State of California began to require that developer fees collected by a school district during the course of approval and construction of a project under the New Construction Program would be contributed to one or more new construction projects approved for a school district. The determination of this local match was made after subtracting the costs the school district was bearing for leases of portable classrooms, toilet rooms and other facilities and for debt that was incurred by the district with the expectation that it would be paid off by the fees collected. After January 1, 1987, school district governing boards were empowered to impose fees upon residential and commercial/industrial development after due diligence in measuring the economic impact of such development. The statute providing this authority capped the fee throughout California to a square footage amount of \$1.50 for residential development and \$.25 per square foot for commercial/industrial development.

The program enhancements language was found in Senate Bill 327 and provided for an increase in square footage for elementary, middle and high school students (which resulted in the ability of districts to build larger schools with greater amenities), and provided for square footage for the Resource Specialist Program (which had been required by the state Master Plan for Special Education since 1980 but was not recognized by the State Lease Purchase Program until that time). This provided for the Advanced Site and Plans Program which allowed districts a longer enrollment projection for purposes of anticipating the impacts of residential development and, thus, allowed for site acquisition funding and planning funding much earlier than the regular Lease Purchase Program. 1986 brought forth two other important items of note: Proposition 46, which restored local GO bond authority to schools, and also the 1986 state general obligation bond in the amount of \$800 million.

These three pieces of legislation were of such significance that those impacted most by the new laws sought a voice in their interpretation. A group was formed to assist the State Allocation Board in determining what the new laws actually meant. Initially, that group was known as the Facilities Legislation Implementation Committee (today it is called the State Allocation Board Implementation Committee). The fundamental quality of the Committee at inception was that practitioners at the local level – such as school district administrators, residential developers and school architects – would have a voice by interfacing with state agency personnel charged with the creation of operational policy for the legislation. This proved to be a highly successful endeavor. A committee which was formed to implement three pieces of facilities legislation in October 1986 is still active in 2003 meeting monthly with a formal, published agenda. The Committee's meetings are open to the public in that it was determined that the work of the group caused it to fall under the open meeting laws of the Brown Act. The C.A.S.H. organization was one of the original members of the Implementation Committee. This writer was the C.A.S.H. representative on the Committee during its first twelve years of existence and used the work of the Committee as the topic for his doctoral dissertation entitled A Study of Policy Implementation (University of Southern California, November 1993).

Although the General Obligation Bond authority was restored in 1986, some school districts had difficulty passing local bonds with the 2/3 vote requirement through 1980s. Districts therefore continued to rely heavily upon the State's Lease-Purchase program. In areas of residential development, districts sometimes sought to create Community Facilities Districts (a term meaning a Mello-Roos tax area) through the cooperation of the developer, or attempted to obtain a higher level of developer fees beyond the "capped" statutory fee.

The latter, when attempted through the land entitlement process of cities or counties, sometimes brought forth litigation. Three successful attempts by school districts to obtain higher fees yielded the *MIRA*, *Hart* and *Murrietta* decisions. Through these court actions, some districts were permitted to extract up to "full mitigation" from a developer for a residential development project. These endeavors created tension in the legislative process, as developer organizations supported proposals to limit "MIRA fees" while education groups opposed those efforts.

The period of the late 1980s through the early 1990s was one of continuing K-12 student population growth. During that time the state Legislature and Governor recognized the reliance of districts on the state building program and sought to address this fact through several means. One was to provide increases in MTYRE incentives. A second was to provide incentives and priority in school construction project funding to districts that would pay for half the cost of a project through 50/50 funding. Still, however, the state provided six substantial state bonds in June and November of 1988, 1990 and 1992. All six were successful. In that regard, see Appendix A.

In the early 1990s, AB 87 became law. This significant piece of legislation was a serious attempt on the part of lawmakers to legislate access to state bond funds for new construction. It created eight tiers of priority in the funding process and gave highest priority to districts intent upon creating a MTYRE project that applied for 50/50 funding. The Implementation Committee and the State Allocation Board interpreted and implemented this legislation. The major objective of the Legislature was achieved: School districts realized a reduction in program eligibility and were required to pay half the cost of a new construction project. The Legislature was seeking to make bond money go farther in a time of fiscal difficulty, while still attempting to provide as best as possible funds sufficient for facilities needs in the state.

Under California law, bond measures and propositions may be placed on the ballot during the regular election cycle of even numbered years. The Governor, however, has the authority to call a special election for an odd numbered year. In 1993, a special election was called by Governor Pete Wilson for purposes of presenting to the electorate two key ballot propositions. One was Proposition 170, a proposal to change the local general obligation bond threshold for passage to a simple majority vote rather than the 2/3 vote that had been in the State Constitution since California had become a state. This measure was created by Democrat, Assemblyman Jack O'Connell, and supported by Governor Wilson and key Republicans. The other item on the ballot was Proposition 172, the Voucher Initiative. Both measures lost. Proposition 170 lost by a 2:1 margin. It was a resounding defeat for schools, yet it spoke of the continuing fiscal conservatism of the California voter and taxpayer. The 2/3 vote requirement for local GO bonds remained.

There is no doubt that the failed passage of a simple majority vote measure was a disappointment which left school districts with the knowledge that California voters still did not want to entrust them with easier access to local bond funds and, therefore, the ability to establish higher local property taxes without substantial effort. This familiar recognition set the stage for enhanced efforts of those vitally interested in California educational facilities issues to continue to pursue higher levels of capital funding through other means. C.A.S.H. was only one of a number of such interested parties that determined that new efforts at convincing the electorate and the Legislature about the benefits of increased dedication of financial resources to educational facilities was necessary. Efforts over time coalesced in ways that find recognition in passage of the three largest bond measures in California history in 1996, 1998 and 2002. What should not be missed is that failure at the voting booth induced new efforts to organize fund-obtaining efforts, to explain and detail the necessity of those efforts to the California electorate, and resulted in vast gains in facilities financing – greater than those of any other state in the past few years. In other words, failure was a harbinger of success in ways that have made and will make a measurable and extremely positive difference for California's school children. The school facility crisis that was embedded in a fiscal conservatism in California became the leading factor in changing public perception about the need to spend more on schools. This dramatic change has been achieved through the legally prescribed political process in which gains for education in this state occur.

By the early 1990s, California was in the middle of a recession. Nonetheless, the next year brought yet another state bond to the ballot. In June 1994, the first in the long series of state school construction bond was defeated. This came only seven months after the unsuccessful effort to pass Proposition 170. Unfunded projects grew and the local bond passing requirement of a 2/3rds vote remained problematic.

The four years between 1992 and 1996 were difficult for school districts due to the recession and the absence of state bond funding. Thereafter, the Legislature acted as soon as was possible in placing a bond measure on the ballot. That first opportunity was in March 1996. The bond measure was Proposition 203 and was highly successful, being supported in areas of California that previously had voted against state bonds. It was the largest bond measure ever for schools in California. It was not, however, a panacea and did not provide complete resolution of all outstanding facilities issues. Nor, apparently, was it expected to be that or do that. It did, however, provide bond funding needed and used by school districts.

The education community began to work in earnest with the Legislature in a cooperative fashion to create yet another bond and to accomplish a "streamlining" of the school construction funding process. The need to simplify the program became a common topic for the Governor and members of the Legislature. And rightly so. This was part of the even more concerted effort described above in which the education community – which certainly includes groups vitally interested in educational facilities issues as well as important elements of the state's educational apparatus – worked cooperatively in a well-intentioned effort to focus attention and achieve legislative action on facilities issues in California. In other words, the process mandated by law worked with a healthy push from those who did not actually hold elective or appointed office.

The MIRA issues, however, were still a problem from the perspective some developers. The California Building Industry Association (CBIA) was adamant that MIRA case law be eliminated through legislative action. This had been attempted unsuccessfully a few years earlier. School organizations supported keeping MIRA in place. A stalemate occurred legislatively. The next bond was held hostage to this issue. Many legislative proposals were offered to break the stalemate. The various statewide education organizations disagreed on a solution. In 1998, a compromise was reached whereby developer fees were increased to cover at least the local share of the state funded project and a guarantee was placed into law to allow for a district to require "full mitigation" of a developer if state bond funds were exhausted. These provisions and a streamlined program were part of Senate Bill 50 approved by the Legislature and signed by Governor Wilson in 1998 in tandem with Proposition 1A, a \$9.2 billion bond measure which provide \$6.7 billion for K-12. This was, again, the largest bond measure yet in California's history.

Proposition 1A was purposely structured as a 4-year bond with specific amounts for new construction and modernization allotted for two 2-year segments for November 1998-June 2000 and July 2000-2002. A new "Hardship Program" was written into law as part of SB 50 and specific funding was provided for Hardship districts in Proposition 1A to assist the more needy districts. As a result of SB 50, the SAB was required to act through "regulations" to limit "political" decision making. The SAB took immediate action with the passage of the bond measure in November to adopt the new regulations. The streamlined nature of the new program was, therefore, implemented in November 1998 with the passage of the bond as required by the legislation.

Senate Bill 50 was comprehensive legislation which attempted to resolve many issues. Due to the pipeline of projects that remained unfunded since 1996, a "grandfather" provision allowed conversions for new construction and modernization projects. The grandfathering of many old projects, the pent up need and the new streamlining provisions began immediately to draw down the 1998-2000 allotment of Modernization funds. Proposition 1A's first segment of modernization funds were depleted by June 1999, a year earlier than planned. A new pipeline of projects began waiting for the second two-year cycle (2000-2002) of Modernization funds. In early 2000, new construction funds remained accessible to districts, but were predicted to be spent before November 2002, the date that the next state bond measure was expected.

In March of 2000, judicial action was sought which involved Proposition 1A funds. The apparent fear by the largest school district in this state and the second-largest school district in this nation, the Los Angeles Unified School District (LAUSD), was that the second cycle of new construction funds would be depleted before the LAUSD could access the program with viable projects. This caused a community group in Los Angeles to file a lawsuit in superior court. The suit, which named the Governor, other state officials and the SAB, was known as *Godinez v. Davis*. The lawsuit was filed to stop the allocation of the new construction funds to other school districts, with the effect, if achieved, that school districts of lesser resources would be denied critical new school construction funds.

The lawsuit resulted in court hearings but no determination by the superior court. The case was settled between the parties through an agreement announced by the SAB after a closed session

meeting on December 13, 2000. In the settlement agreement, the SAB agreed to implement a priority ranking system for funding new construction projects, agreed to initiate quarterly funding rather than monthly, and agreed further to create a reserve of \$450 million dollars which would not be spent until after June 2002. The settlement appeased the LAUSD plaintiffs but angered many others.

The results of the SAB action are notable. The C.A.S.H. organization, on behalf of itself and 55 school districts, responded by filing a lawsuit against the SAB alleging that state law was interpreted wrongly in the actions taken in initiating the "priority points" provisions of law. The quarterly funding of growth projects began the creation of an enormous pipeline of new construction and new construction hardship projects. (The remaining modernization funds had all been allocated in July 2000 at one SAB meeting and, therefore, the pipeline had commenced at that time for modernization funds.) The positive response to this conflict was the tremendous amount of visibility given to the need for more new construction and modernization funds. Some if not many or all of the members of the California State Senate and State Assembly knew of priority points and disliked them. This gave tremendous support to those seeking a resolution to school facility funding and related issues. This was helpful in creating the current bond, Proposition 47.

The C.A.S.H. organization began discussing the need to find a solution to the dilemma caused by the priority ranking system that benefited a single district but not all districts. Clearly, the SAB settlement had been predicated upon the slowing of the expenditure of the bond funds. C.A.S.H. proposed a new state program to be included as part of the next bond. That program is now in law as the Critically Overcrowded Schools provisions of AB 16, the legislation that created the current bond. These provisions allow that \$1.7 billion of Proposition 47 funds be for districts which have critically overcrowded schools, as defined by AB 16. Under this program, a qualifying project would have funds reserved for it for a period of four (4) years and potentially five (5) years in order that a district could rely upon the funds being in place at the time it begins the process of acquiring a school site and initiating the construction of a school.

It is important to note that the action of the Legislature was historic – not only in California, but quite possibly in reference or comparison to other states – in that it placed two bond measures on the ballots for 2002 and 2004. In addition, the total of the two bonds equal amounts of need demonstrated by state agencies and C.A.S.H., amounts supported by all education groups. Proposition 47 was a landslide victory. The SAB made history on December 18, 2002, by apportioning on the order of approximately \$5.4 billion at a single meeting.

In March 2000, a simple (50% +1) majority vote measure was placed on the ballot. It lost in a very close election (48.8% yes and 51.2% no). In November 2000, with support from Governor Davis, his administration and the education community generally, Proposition 39 was placed on the ballot; it was a "Super-majority" vote measure which asked voters to support changing the 2/3 vote requirement to 55% if the tax was limited by keeping property taxes below an annual ceiling of \$60, \$30 and \$20 per \$100,000 of assessed value for unified school districts, elementary and high school districts and community college districts, respectively. It was successful. The import of this measure cannot be ignored or overstated. Many local bond

measures have been successful as a result and we can expect greater success in the future. Attached as Appendix C is an overview of local bond measures over a number of years.

The K-University Master Plan

At about the same time that the *Godinez* lawsuit was filed, the Joint Committee to Develop a Master Plan for Education, K – University, appointed various working groups to provide input to the Joint Committee. One group was appointed to provide thoughts and proposals on the matter of school finance and school facilities. I was the co-chairperson of the school Facilities Working Group.

The proposal which was the product of the work of the Facilities Working Group was completed and given to the Joint Committee in 2001. The body of the document came from the working group as a whole and, thus, represents many compromises. The issues and recommendations of the Working Group were hotly debated. There is no one, single view on all that must or should be done concerning educational facilities issues in California, and the deliberations and compromise recommendations of the Working Group are certainly a prime example of that reality. For instance, I had, based on my years of experience and knowledge about facilities issues, tremendous difficulty with the concept of the annual per student allotment of state funds to be used for new construction and modernization needs of districts. It was supported by a majority of the working group and was influenced by the participation of a member of the staff of the Legislative Analyst's Office which had, in early 2000, released a document proposing such a concept. The Working Group's concept, as written, is a modified version of that proposal. The significant difference is that the concept put forth by the Working Group suggests funding of modernization projects first in a transition to the annual per pupil allocation as a means of insuring that it work before abandoning the practice of using state general obligation bonds to fund the state's school construction program.

The Facilities Working Group discussed and vigorously debated a wide range of issues relating to school facility needs beyond that of changing the state funding model. One proposal is to require that districts consider maintenance and facility needs during the budget adoption process. It was suggested that a criteria and standards document be developed and used in assessing each district's maintenance needs and the status of planning in the district. This was proposed in that maintenance and facility issues are issues of funding and budgeting. Such is required now by AB 1200 as a means of assessing the fiscal status of the district prior to the adoption of the general fund budget. Under this proposed mechanism, a district's capital funds, the Deferred Maintenance fund and the general fund would each be reviewed in such a comparison before budget adoption by a local school board. Recognizing that there are many needs in local districts and all districts have local issues to resolve, the Facilities Working Group proposed, with the Finance Working Group, that more local options are needed for districts to meet funding shortfalls. One such option, as proposed, is the 55% vote for Parcel Tax elections.

The Twenty-Five Year History of K-12 Education And the Complexity of Governance and Leadership in Public Schools As Political Entities

The people of California spoke forcefully and clearly in June 1978 and created a state wide fiscal policy which was firm and conveyed a suspicion of elected and governmentally-appointed leaders. The people felt that control of property taxes was necessary and that school districts and other local agencies should "do more with less," be creative and not simply reduce services. The collective bargaining process, which produced much conflict and drama during bargaining stalemates or "impasses," often led to allegations of frivolous expenditures by boards and superintendents. These events were covered by the media, and brought public decision makers' trustworthiness into question on a cyclical basis, that cycle being the length of the collective bargaining contract. The public's scrutiny of public schools went beyond the collective bargaining process and included the comments made at city council meetings about school officials planning effectively for growth.

Districts sometimes found that responding to complaints and allegations by blaming the State's financing system, the "red tape in Sacramento," or the purported failure of state agency personnel, was a convenient defense. A common complaint of local education officials was that the state funding is insufficient to meet all the districts' needs. There is often a fine line between the appearance of a well-managed school district and one that is failing to meet obligations, formal and informal. The vast majority of school districts in California are well managed by caring superintendents and governed responsibly by elected boards. Yet the perception, from media accounts to comments from members of the public at televised meetings of governing boards, is that some minority of schools and some minority of school districts are failing. That is a false perception. The dearth of districts under state trusteeship throughout the past twenty-five (25) years is but one piece of evidence of that fact.

It is noted that state elected officials learned, too, of the public's demands and certain levels of occasional distrust of public school boards and superintendents. Many of them began as local mayors, city council members, county officials and school board members. The public sensitivity to taxes, especially local property taxes for school bonds, was well known in the State Capitol.

The complexity of governing and leading a school district, therefore, increased demonstrably after 1978, for the myriad reasons I have noted above. The emergence of school districts as the "glass houses" where every action could be scrutinized had the effect of over emphasizing certain issues and needs, while diminishing others. Community support groups and interest or even "pressure" groups, which are sometimes hard to distinguish, knew and practiced the political strategy of "the squeaky wheel gets the grease." The grease in schools is most often, though not always, a decision regarding the expenditure of money. An example, noted above, of the competition between spending funds for maintenance or higher salary increases, was not atypical. That is an example of the forces of changing law and politics that has influenced state and local educational policies. Some districts, in their discretion, favor providing more beneficial teacher salaries and some do not. In light of these realities, the State's Deferred Maintenance Program was created; this common occurrence encouraged the Legislature to

impose the 2% and, later, 3% On-Going Maintenance auditable requirements of acceptance of funding through the State's Lease Purchase Program and the School Facility Program, respectively. The multiple constituencies of school boards and superintendents created a constancy of divergent demands for recognition and satisfaction as well as an increase in accountability of the local officials.

An important note is that the failure of local general obligation bonds at the local level led districts to create a trend in the appointment of groups called "oversight committees." These were commonly found to be formally appointed committees of local citizens who were not elected, yet were to hold the elected board and superintendent accountable for the expenditure of local bond funds should the election be successful. The community which elected the governing board wanted that board to appoint a second "board-like" group to over see the actions of the elected board. The irony in the simile is overshadowed by the success of this concept. So successful was the concept that it became a cornerstone in the Proposition 39 legislative proposal and a significant feature of the campaign to allow the 55% super majority vote. "Citizen Oversight Committees" (COCs) are now active throughout California in districts with successful Proposition 39 elections. These are now a new, formally-appointed constituency of governing boards and superintendents that have identified terms of service.

Local Constituency Interests Impact the Process of Planning for New Schools and in Maintaining and Repairing Existing Schools

The demands of parents, teachers, classified employees and various community groups, including athletic boosters, impact the process through which a school district governing board plans for expenditures during the course of any school year, as it considers attendance boundary change proposals and as it plans to modernize or repair existing schools and plan new schools. Those closest to the schools are frequently called the "school community" and in most districts, it is carefully listened to by board members and district administrators.

Others will impact district decision making, including preservationists and historical societies which want to preserve old school buildings, park and recreation groups who want greater access to school gyms and playing fields, local church groups who may need to use a multi-purpose room each weekend for church services, no-growth advocates who oppose the district's efforts to build a school or to come to an agreement with developers, anti-tax advocates who voice opposition to local bond measures and, from time-to-time, a charter school representative who seeks to share in district capital funds.

Business interests will seek to impact district decision making as the need arises. Those in the business of agriculture may not want schools to take their land for school building purposes or may oppose the building of a school near their farm land. Manufacturers and retailers may express various concerns when a new school is proposed or if a major boundary or grade level change is proposed because the change may impact pedestrian or vehicular traffic in their area.

Developers see a school district as a partner and as a source of impact on their proposed projects. The partnering comes forth in advertising the residential project as one with a "good school"

(preferably elementary) nearby. The impact comes from the need to pay varying levels of developer fees. A district that works closely with a developer in planning schools is invariably criticized for being too friendly or "holding hands with the developers because the district needs money."

All of those noted and many others will have an impact upon a school district as its board and superintendent make decisions. Some of those decisions will have long term funding impacts, such as when more money is budgeted for salary increases and less for maintenance of buildings, and some will mean that a group has pressured the district to avoid a major decision such as not exercising the power of eminent domain.

At the time that a school district board of education and superintendent determine that they must seek one or more school sites in order to acquire those sites and begin planning for the construction of schools, a number of state agencies become involved and any number of local agencies may become interested and, therefore, involved in the school siting and planning process. School sites are selected based upon criteria provided by the California Department of Education (CDE). Those criteria deal largely with the factors of the health and safety of students and of those who serve students. In the end of the process, it is the local governing board with the approval of CDE that will make the final determination on a selection of a school site if the project is funded under the State School Facility Program. If the project is funded solely by local revenues, the governing board itself is required to follow the guidelines of CDE and any statute which is existing; however, site approval from CDE is not a requirement in such a circumstance.

In either circumstance, however, the local governing board and the administration of the district are the decision makers regarding the best location for the school(s), having the local perspective of need and recognizing local pressures which may need to be managed. In the latter part of the 1990s, the Department of Toxic Substances Control (DTSC) began working with school districts in response to legislative action seeking to provide a level of site cleanliness which was beyond that required for the construction of any other type of building in California. Prior to this time, toxic issues were dealt with at the local level, with no one challenging the local district and governing board having the capacity to do the right thing and follow the law and providing only safe, healthful school sites. Over time, however, the state became more and more directly involved in the site approval process by the CDE with the assistance of the DTSC. This top-down reaction in responding to the toxic issues has had the effect of slowing the process of school site approvals; the state's wisdom and moral perspective was substituted for that of local officials. The prudence of that decision continues to be questioned years later.

The environmental review process at the local level has been in existence since the 1970s for school site development. The toxics review legislation, referred to above, complicated this process and provided a new tool for challenging the sites chosen for the building of schools. The effect has been a delay in the construction of building projects in some school districts.

Cities, counties, water districts, highway patrol, CAL TRANS and the CAL TRANS Aeronautics Division, among others, may have what they consider to be a vital interest when it comes to the choice of a school site and construction of a new school. As the district prepares an environmental quality impact document in the CEQA process, one or more of these agencies

may respond, identifying proposed impacts of the project. The other agencies may also suggest the means for ameliorating the environmental impacts claimed. Cities, in particular, and counties in unincorporated areas, may find that a site identified for a school in a specific location is not consistent with local ordinances. A governing board of a school district has authority to set aside, by a 4/5 vote of its members, a city or county ordinance. After waiting for a 30-day period, the district may proceed with the acquisition of the school site and the commencement of a project.

Statute provides two things: (1) the authority of the governing board to prioritize its needs for educating children over the perceived direction of community development as seen by a city council or the county board of supervisors; and (2) the Legislature has provided that the district must wait 30 days to allow the city or county to challenge the governing board of a school district in superior court with regard to its actions (and whether or not those actions were arbitrary or capricious). Notwithstanding the lack of action on the part of the city or county, the CEQA process may be used when another local jurisdiction disagrees or simply dislikes the action of a governing board of a school district or seeks for political or other reasons to become an impediment in that process. The local governing board must publicly consider the objections or comments of those responding in the CEQA process and include these comments in the record of documents. The local school district governing board may take action on comments or simply identify them as part of the record of responses and approve the final document. The action of the district board may be challenged in court at a later date.

Beyond the CEQA process, another governmental entity may intrude into the process in a variety of ways such as through a public pronouncement that the district made an error or through an action of another local body that the district must follow their "ordinances" or pay certain local development fees, as if the district were a "residential developer" in the site development and building of the school. Other local agencies may seek to control school districts and may attempt to "require" the payment of fees or the costs of related infrastructure, such as new traffic signals or other capital costs including roads and highway overpasses. The super-agency, the Local Agency Formation Commission (LAFCO), may insert itself into the process of school planning and may too hinder the process. Where the law is silent, other local agencies may seek to exercise control by various means including using their own public meetings and the local press as forums.

The Financial Tools Available to All School Districts As Used in a Comprehensive Plan

The General Fund: Financial Backbone Of The School District

- The General Fund of each district is the "check book" from which all normally reoccurring expenses are paid such as employee salaries and benefits, supplies, insurance, utilities and contracts for services such as legal advice and defense.
- The "District Budget" means the general fund budget adopted by the Board of Education as the financial plan for anticipated revenues and expenditures.

- “Program Budgeting” is the consolidation of anticipated revenues and expenditures for specific programs such as Class Size Reduction, Transportation, Food Service, On-Going Maintenance or Deferred Maintenance. In a Program Budget, all planned expenditures are identified which are necessary for supporting the specific program and, therefore, salaries and benefits, books and supplies (e.g., condiments for the cafeteria, custodial brooms, soaps and waxes, maintenance tools and spare faucets for toilet room repair and diesel fuel for school buses), and other expenses are charged to that program.
- State regulations require that each district’s general fund include a “Reserve for Contingencies” (also referred to as “Reserve for Economic Uncertainties”) which is equal to a specified percentage of the General Fund. The percentage is larger for small- and medium-sized districts and is smaller for large districts. Districts may choose to carry a higher reserve than required. If a district carries less than that specified in regulation either purposely or due to fiscal constraints, the County Office of Education may place the district in a “watch” category and will seek to assist the district in reconsidering anticipated expenditures and in reviewing the projection of revenues.
- The financial well being of the district’s general fund will be measured and considered as a district endeavors to exercise its authority to obtain any form of non-voter approved loan or lease-purchase (as with consumer debt for individuals, the higher the credit worthiness of the district the better rates that will be available and the easier the effort in finding a willing lender).

Beyond the General Fund

School districts, as noted above, receive state and local funds dedicated to the operation of the schools including the payment of salary, wages and benefits to employees, the costs of books and instructional supplies, the cleaning and general maintenance of schools and all other non-capital needs of districts. The expenditure of such revenue comes through the general fund of the district and in the form of categorical funds. Capital needs of districts are met through funds for major maintenance and repair, modernization and new construction. These funds may be obtained through a vote of the electorate in a community to support an increase in property taxes in the form of a general obligation bond or parcel tax or through state or federal programs.

The State of California, as noted above, has established a number of capital programs available to eligible school districts. The federal government has had a long history of reticence in providing capital resources to schools; however, it has done so in the past and still does so from time-to-time today in a limited approach, typically focused upon and directed at communities and schools with lower levels of wealth. Below is a summary listing of capital programs most commonly available to school districts and county offices of education at the local, state and federal level. This list is not exhaustive; however, each item mentioned should be familiar to an experienced school district superintendent or chief fiscal officer.

Debt Instruments Available To School Districts

Local Bonds and Parcel Taxes

The Constitution of the State of California requires that a school district governing board must repay any debt against its general fund within the fiscal year in which the debt was incurred. It is, therefore, unconstitutional for a district to agree to a debt such as a mortgage to purchase property. The Constitutional framers in California provided, however, a separate debt instrument for the purchase of land and the construction or major repair of buildings; that instrument is the voter-approved general obligation bond. The Parcel Tax was added to the State Constitution as yet another voter supported capital financing instrument.

Local Non-Voter Approved Financing

Due to the Constitutional prohibition against long term debt, school districts rely upon financing methods which are leasing instruments. One entails the creation of a separate corporation by a school district in which the governing board, the superintendent and the chief fiscal officer serve as the corporation board. The "corporation" issues and sells debt certificates called "Certificates of Participation" (COPs) which are in actuality a non-voter approved bond. The sale of these bonds provides funding to the corporation, which in turn uses the money for capital projects such as the construction of a new school. The project is then "leased" to the school district by the corporation. The district makes lease payments to the corporation according to an established schedule, allowing the corporation to repay the principal and make interest payments. COP's are typically long term debt instruments which are retired after ten or twenty years.

Lease-Purchase instruments also avoid the constitutional debt prohibition as financing tools which provide a capital project by way of a "lease" of the project. The lease provides a buyout clause in the final year through which the district purchases the project for a minimal payment such a one dollar. These arrangements are typically shorter term debts of three to seven years duration.

State and Federal Programs Available to Districts and County Offices of Education, and Other Options for Financing School Construction, Modernization, and Repair

Deferred Maintenance Program

Standard Program Requires Dollar for Dollar Matching

Critical Hardship Program for More Costly Major Maintenance Projects

State Leased Portable Program

Affordable leases of modern individual classroom buildings

State School Facility Program (SFP) which Replaced the Lease-Purchase Program in 1998

New Construction as a 50/50 match program, half state and half local funding

Urban Adjustment

Small site Adjustment

Small project Adjustment

Modernization

80%-20% (through February 2002)

60%-40% state share at same level/requires additional district contribution

50-year-old building program increased funding building; new site renovation

Financial Hardship Program to cover the local share of costs in either program

Facility Hardship Program to rebuild or replace unsafe buildings

Pre-school Portable Program

Loan program to support districts seeking to provide pre-school and child care services.

Federal Qualified Zone Academy Bonds (QZAB)

A federal interest free loan opportunity to rebuild, repair and modernize district facilities.

Federal Renovation Program

A federal grant to rebuild, repair and modernize district facilities.

Facilities Issues In California Now And In The Future

California's Unique Historical Experiences Have Shaped Its Present And Provide A Basis For Continued Future Successes

The historical overview provided above demonstrates that, despite political, social and economic issues, constraints and conflicts, the education community and the Legislature in California have acted to address educational facilities issues in this state in a consistent and deliberative manner. The political system of inputs and outcomes as described in the Easton Model applies well to what has been established in California in the area of school facility financing at the local and state level. Inputs to the public services system, especially in schools in the form of new students to educate and properly house, produced outcomes of the system of local school governance in planning for new schools and seeking additional resources. Those outcomes and many more from other local government entities brought forth the reaction which became the input known as Proposition 13. That produced a series of outcomes and inputs which are identified in the short history above demonstrating a local involvement in the process of state policy formation to the betterment of schools. The practical reality is that California taxpayers do not support the levels of property tax in particular, and other taxes in general as do the voters and taxpayers of other states. Other resources were therefore created and are still operational today which may be organized in a system of resource management to effectively serve students.

The Current System and the Matter of Local Focus in Decision Making

The current system has developed over the course of twenty-five years and provides significant levels of financial support (inputs) at the local and the state level to meet a continuing level of needs. The issue in comparing school districts today is how, and how well, they manage the resources available, how they plan to increase or seek out additional resources and how they prioritize their expenditures. In the end, through a painstaking analysis, a researcher may be able to determine who the board and superintendent in a given school district actually sought to serve in their budget decision making. The information is available in audit reports, board minutes of the budget adoption process and in how facilities and other issues are dealt with on a day-to-day basis through a review of “work orders” produced by principals and teachers and researchers. Local needs and the differing levels and kinds of resources may be compared as districts are compared. Yet it is local decision making that separates the successful districts in terms of adequate facilities from those that are unsuccessful or simply mediocre.

The Status of School Facilities in California in the Year 2003 and the State’s Near Future Regarding School Infrastructure Funding

During the period after Proposition 1A beginning November 1998 and through the determination by the SAB that it would institute a controversial priority funding system in December 2000, school district personnel, governing board members and statewide organizations believed, for the most part, that California had begun to resolve in major fashion the school facilities crisis. Proposition 1A was a major accomplishment of the Governor and the Legislature, the C.A.S.H. organization in particular, the other education groups and the statewide school community. A new state general obligation bond was anticipated in 2002 in a consistent effort to meet the huge capital needs of K-12 schools (and higher education as well). The rapid allocation of modernization funds from Proposition 1A underscored that need.

The campaign to demonstrate to policy makers in Sacramento that the facilities crisis resolution in California was an imperative for the 2001-2002 legislative session was energized. *Godinez v. Davis*, the SAB’s response to *Godinez* and *Corona-Norco v. SAB* (the C.A.S.H. lawsuit) produced, with lobbying assistance, the recognition that Proposition 1A needed to be replicated, enormously enhanced and augmented. Proposition 47 was the result. This bond measure, through Assembly Bill 16, was tailored legislation which sought to resolve many small and large policy issues. Through the structure of AB 16, the Legislature and the Governor created a second bond for 2004. This had never been accomplished by others in the Capitol; it was believed politically improper to “impose” a future bond on a future Legislature. A significant metamorphosis in political will, and therefore political values, was evident in this action. The two bonds represent an historic determination by the state that at least \$25 billion is needed for K-12 and higher education now and in the near future — at least through March-November 2006. The current discussions in Sacramento include what new policy objectives to target within the 2006 bond. Building, modernizing and repairing schools is a priority in California in the early 21st Century.

Future Focus

Over the past several years, the focus of the Legislature and the Governor in the area of education, even in a time of fiscal crisis and great political concerns, has been on the provision of adequate resources to provide adequate facilities. 2003 presents a high point for school facilities in California, and, as noted, the education community is looking forward to the 2004 bond. "Adequate resources," a term gleaned from the Master Plan, means enough to do the job before us. We are on the right path in policy decision making to support the building and rebuilding of our schools.

To those who would proffer a "new system" based upon a "top-down" governance structure for California, upon some other state's plan, or upon the disconnected recommendation of an academician who has studied the issues in the form of reports and data but has no hands-on experience, the message should be delivered that such notions are not necessary. Such notions belie a lack of understanding of the complexities of the governance of public schools anywhere in the United States and particularly in California — the most populous and diverse state. The perception presented connotes a distrust of the skills and the passion of those who lead education in California. However, this state and its recent history demonstrate that its practitioners and policymakers can collaborate in an effort to make a difference. A unique political dynamic has been established in California, whereby local decision makers and those who create and administer policy at the state level convene on many levels to sculpt the future.

In light of the past experiences of California regarding facilities issues, and with recognition of the dramatic fiscal problems that currently confront California, the following is offered. The successes achieved in terms of obtaining new and significant sources of funding for new school construction and modernization in California are the harbingers of a heretofore unseen political dynamic. The State has made significant progress and is on target to continue to respond to education issues with fiscal realism, rather than politically motivated fiscal restraint. Elected state officials and local voters are less strident in their criticism of schools and have found a new moderate voice regarding education, a voice which has yielded support within the Capitol and in the polling booth.

There is no doubt that the schools in California are not yet out of the woods. Work on the issues presented must be sustained. There is adequate evidence, however, that the Governor, other state officials and local education leaders, as well as the voters of the state, will continue to support public education and rise to the challenges, seen and unseen. This new political dynamic embraces rather than ignores the needs of schools.

The Master Plan and, specifically, the final report of the Finance and Facilities Working Group on K-12 Education, is a product emanating from a group representing a diverse professional microcosm of the "statewide education community." This group provided suggestions, based upon experience in the field which represent considerations for change aimed, in the main, at improving the daily working environment for students in compulsory education. As noted above, however, that final report did not reflect divergent individual viewpoints of the working group, nor did it find support with many practicing professionals involved in resolving facilities issues in California at the local level or in Sacramento. Of necessity, a grudgingly agreed-upon

consensus was found. Indeed, the issues and recommendations set forth in the final report continue to be discussed and debated, just as they were during the discussion surrounding their development. The California Legislature now has before it those recommendations and can be expected to them debate them. What will finally emerge from that necessary, deliberative and likely controversial process, will be what they in the end believe to be the best for California and its students in the context of its unique and at times perplexing facilities issues, as well as the inevitable constraints of the state's and local district's fiscal capacity. Senator Dede Alpert, the Chair of the Joint Legislative Committee to Create the Master Plan, offered her personal perspective on this dilemma in February 2003 at the C.A.S.H. Annual Conference in Sacramento by noting that this will be a difficult year to embark upon the Master Plan due to the huge budget issues before the Legislature, but that those in the Capitol must begin as best they can: Now, in this session.

The expert reports of Dr. Nancy Myers and Mr. Corley concerning facilities issues in California require comment. The Myers and Corley reports are directly at odds with the views expressed in this report. It is noted, however, that considered as a whole they actually mimic some of the recommendations set forth in the final report of the Finance and Facilities Working Group on K-12 Education as depicted in the Master Plan. Some of the suggestions and recommendations in the Myers and Corley reports are, therefore, similar to concepts that the California Legislature is already considering.

It is noted, further, that the suggestions and recommendations of the Myers and Corley reports set forth one set of views on topics that many dedicated and knowledgeable education professionals have confronted or considered in a very hands-on fashion within the last quarter century. These reports reflect a set of perspectives based upon differing levels of academic or practical experience. These viewpoints are neither singularly unique, nor do they necessarily offer the best solutions available. Some views and concepts identified are not workable as policy in California.

As an example, both Dr. Myers and Mr. Corley offer opinions about maintenance issues and then offer solutions. While detail in their proposals is lacking, the proposals themselves are not entirely lacking in merit. In the observations they make, however, each assumes a need for substantial and potentially disruptive change. The justification, not wholly accepted here, seems to be in part that California's current systems are irretrievably traumatized and that only bureaucratic triage can save them. Little is said, moreover, of the parts of the current systems that, as constituted or with modifications, could best deal directly with the "maintenance problem."

A further example is the apparent call by Dr. Myers and Mr. Corley for a centralized system, managed out of Sacramento, to assure correct maintenance of schools. The recommendation first is made that (apparently) mandatory standards concerning facilities maintenance and modernization must be imposed by the state in classic top-down fashion. Each also proposes a somewhat vague new organization that would monitor and inspect all facilities, and make state-level judgments about local problems and solutions. It is also proposed that state-imposed prioritization decisions be made to resolve facilities maintenance issues statewide. Overall, the proposal recognizes neither the character of California and its values for decision making

regarding educational needs at the local level nor the inherent inefficiencies of a centralized system in bringing forth positive change in a vast and diverse social, economic and political environment such as in the Golden State. Centralization fails in education; it is an ineffective model. In 350 years of public education in the United States, it has been consistently rejected as unworkable.

Standards for maintenance and modernization exist in California, albeit not in the same construct that Dr. Myers and Mr. Corley advocate. School districts and their facilities and operations personnel have extensive expertise, and district-generated plans, processes and procedures are successful and appear to have been ignored by the experts. Indeed, if the plaintiffs' expert's own observations are correct about the status of facilities in California, the vast majority of districts are taking appropriate steps to assure proper building maintenance and modernization. To suggest that all is perfect is not appropriate. To suggest, however, that California does not have a system organized to address maintenance and modernization issues responsibly is not correct. C.A.S.H. created a Maintenance Network for school maintenance personnel in 1997 for the sole purpose of convening those whose job it is to maintain every aspect of schools so as to share, to learn and to advocate legislatively. The California Association of School Business Officials (CASBO) offers in-service programs on maintenance at meetings held regionally throughout the state. The issue of maintenance is, at its core, the appropriate fund distribution decision at the governing board and superintendent level to deal with the matter.

Another example of a recommendation that does not necessarily consider all aspects of California's unique educational history and current level of development pertaining to facilities issues is Dr. Myers' suggestion of a system or set of policy initiatives concerning organizational structure, inventories, inspections and proposed funding changes. Dr. Myers' experience with educational facilities issues in California appears quite limited. Some of her viewpoints, however, have been a part of the debate concerning important issues in this state.

Dr. Myers' proposes massive changes which represent a single set of views on which many well-founded alternate views also exist. The recommendations are quite general in nature, with important specifics left to be discussed, apparently at some future time. Analysis of the recommendations is absent altogether.

For instance, Dr. Myers suggests adoption of what she terms a partnership between the state and districts and an organizational structure better designed to assure maintenance in California schools. Few specifics of precisely what form this proposed new system might take are given and, thus, it is difficult to analyze the effects – intended and unintended – that might result from the changes recommended by Dr. Myers. General reference to systems from the other states cited in this regard (specifically, New Mexico and Maryland) are not persuasive, do not offer a proper basis for comparison and do not suggest proper models for what California might or should do. California is a vast state with a very large and diverse student population. There are more than 1,000 school districts, 7,000 school building and well over 200,000 classrooms that comprise California's school system. Dr. Myers may not be insisting on wholesale adoption of what these other states do. There is not a great deal of evidence or analysis, however, that offers those systems as the leading examples of success, particularly when no real information is provided about how well the systems in those states actually work. In education, it has been

found that successful programs can be adopted and exported and that replication in other locations can indeed flourish. The variables for successful replication, at minimum, are careful attention to detail, training, sustained funding and top-down-bottom-up implementation.

Similarly, while inventorying and inspecting facilities may be appropriate in some circumstances, the means Dr. Myers advocates for such a process is far from the only (and not necessarily the best possible) alternative. School districts in California already have myriad systems in place. Districts interact with the state on these and other issues and, in their own self-interest, districts take steps to assure outcomes that Dr. Myers suggests through her own preferred mechanisms. Discussion and analysis of what currently is done in California receives short shrift in her report. Again, in choosing among policy options, analysis of current status and cost-benefit and other analyses of proposed options is required both from practical and political standpoints.

Dr. Myers' proposals regarding standards and inspections suffer from the same narrow focus. Systems similar to those apparently implemented by the states of West Virginia and Maryland are highlighted but, again, information as to why these states serve as models and data relating the level of success achieved by them is not detailed in any systematic fashion.

These and other aspects of Dr. Myers' proposals suffer, in my view, in other ways as well. For instance, Dr. Myers suggests square footage inventories, maintenance planning protocols and a material change in funding based on, among other things, a "wealth index." The suggestion seems to be that this level of institutional or systemic reform is vital to assure appropriate educational facilities in California. This viewpoint suggests that data and protocols will, with a fundamental revenue enhancement, create change at the local level. Again, this is not a view shared by a majority of education practitioners in school communities in California. Indeed, the suggestion that an economical, efficient and effective system can be implemented through a centralization of power and authority at the state level is highly questionable, ignores or fails to understand the dynamics of school governance and management at the state and local level in California, and raises practical and political concerns that receive no discussion in Dr. Myers' report. The report also lacks any analysis of fiscal impacts and the disruptions to current funding models and programs. The anticipation of real or perceived disruptions of classified jobs in school districts requires an analysis of labor implications.

Under Dr. Myers' proposals, the power, authority and input of the districts, themselves, and other local stakeholders would be minimized. This is impractical and is not supported by any other practices in California. Local input regarding and control of the critical issues of educational facilities at the school district level is vitally important. Top-down governance is frequently seen by others outside political and social systems as the ultimate solution; that is not supported by practice or research in education. It does not work.

In sum, the proposed policy initiatives or systems advocated by Dr. Myers or Mr. Corley are not essential or even preferable; indeed, practicality and local views and prerogatives are ignored. The State of California is making appropriate gains and taking suitable steps to address the issues it faces concerning educational facilities. There is reason to consider change and reform as challenges present themselves. This is precisely what California has embarked upon.

This is particularly true in the area of educational facilities funding. Simply put, funding is not an issue at this time. The recent state bond and Proposition 39 address current needs. A state bond program which matches local bonds (gained mainly through the 55% Proposition 39 Initiative) is a partnering of state and local funds, a reality conceived of and planned in the past. The 50/50 program for new construction was actually conceived and implemented in the late 1980s.

The historical action of the SAB on December 18, 2002 to apportion \$5.4 billion in New Construction and Modernization funds provides an exclamation point to current school facilities policy. The fact that approximately \$5 billion still remains to be spent is astounding. Proposition 47 funding is anticipated to last through August 2003 for Modernization and through February 2004 for New Construction. The appropriate state agencies (CDE, DSA, OPSC) are intent in their purpose of moving projects forward and making fund releases. State level groups like C.A.S.H. and local school officials, anxious to promote the March 2004 bond, have already begun the campaign.

In summary, California has established effective, workable and reasonable means and systems for facilities funding and addressing facilities issues. Over the past five years, the State, local officials, the education community and the voters have demonstrated a commitment to resolving new school construction, modernization and school repair issues through extraordinary increases in funding. California has now a well-defined system that assures the equitable and responsible funding of facilities needs. Dr. Myers' and Mr. Corley's top-down approach for addressing facilities needs and financing is one means but not one that would work in California. In regard to educational facilities issues, California is doing well and is on the right track.

Appendix A

**C.A.S.H.-Sponsored
Statewide School Bonds**

Month	Year	Proposition Number	Amount	Percent		Votes	
				Yes	No	Yes	No
November	1982	Proposition 1	\$ 500 Million	50.5%	49.5%	3,621,422	3,554,500
November	1984	Proposition 26	450 Million	60.7%	39.3%	5,190,887	3,354,902
November	1986	Proposition 53	800 Million	60.7%	39.3%	4,100,775	2,651,479
June	1988	Proposition 75	800 Million	65.0%	35.0%	3,519,902	1,899,245
November	1988	Proposition 79	800 Million	61.2%	38.8%	5,651,376	3,578,515
June	1990	Proposition 123	800 Million	57.5%	42.5%	2,781,974	2,054,386
November	1990	Proposition 146	800 Million	51.8%	48.2%	3,679,108	3,424,276
June	1992	Proposition 152	1,900 Million	52.9%	47.1%	3,119,411	2,774,699
November	1992	Proposition 155	900 Million	51.8%	48.2%	5,440,083	5,061,978
June	1994	Proposition 1B	1,000 Million	49.6%	50.4%	2,095,620	2,130,196
March	1996	Proposition 203	3,025 Million ¹	61.8%	38.2%	3,258,442	2,009,983
November	1998	Proposition 1A	9,200 Million ²	62.5%	37.5%	4,522,509	2,721,959

Total Attempted Twelve Propositions 21.0 Billion

Total Passed Eleven Propositions \$20.0 Billion

¹2,025 million for K-12

²6,700 million for K-12

Appendix B

K-UNIVERSITY BOND ACT CONFERENCE REPORT

The Conference Committee on the Education Bond has completed its conference report for vote on the Floor of each House. Efforts are being made to complete the floor action today (3/21 — aptly, the vernal equinox). The major provisions of the bill include a \$13.05 Billion Bond for November 2002 and a \$12.3 Billion bond for 2004 — an election in each of those years would be required. The funding allocations for each year is as follows:

2002 K-12	GO Bond	Revenue Bond	Total
New Construction	\$3.45 billion		
Charter Schools	(Up to \$100 million)		
School Facility Assist Fee	(\$25 million pending ballot measure)		
Modernization	1.4 billion		
New Construction Backlog	2.9 billion		
Modernization Backlog	1.9 billion		
Critically Overcrowded Schools	1.7 billion		
Joint Use	0.05 billion		
Energy	<u> (20 million)</u> of above categories		
Subtotal K-12	\$11.4 billion		
 2002 Higher Education			
University of California	\$ 408.216 million	\$279 million	\$ 687 million
California State University	495.932 million	191 million	687 million
Community Colleges	<u>745.853 million</u>	<u>171 million</u>	<u>917 million</u>
Subtotal Higher Education	\$1.65 billion	\$641 million	\$ 2.29 billion
TOTAL for 2002	\$13.05 billion		

2004 K-12

New Construction	\$ 5.26 billion		
Charter Schools	(Up to \$300 million)		
School Facility Assist Fee	(\$25 million pending ballot measure)		
Modernization	2.25 billion		
Critically Overcrowded Schools	2.24 billion		
Joint Use	0.05 billion		
Energy	<u> (20 million)</u> of above categories		
Subtotal K-12	\$10.0 billion		

2004 Higher Education

University of California	\$ 690 million
California State University	690 million
Community Colleges	<u>920 million</u>

Subtotal Higher Education **\$2.3 billion**

TOTAL for 2004 **\$12.3 billion**

For the first time higher education funds are not split in the traditional 1/3 for each sector manner. The proposed allocations are 30% each for UC and CSU and 40% for the community colleges. This is a historic change in allocations which apparently is in recognition that the community colleges serve nearly twice as many students as the other two sectors combined.

Appendix C

LOCAL SCHOOL DISTRICT BOND ELECTION RESULTS
(1986 THROUGH NOVEMBER 2002)

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL	%	
Spring																				
Pass		2	7	8	6	7	11	10	10	6	6	18	29	17	19	5	52	213	60.68%	
Fail		10	4	4	5	9	13	7	10	16	1	10	20	11	16	2	10	138	39.32%	
June																				
Pass	0	1	5	2	3	7	4	8	6	15	18	26	22	12	14	8	0	151	56.55%	
Fail	1	2	4	5	4	12	11	14	8	8	7	12	10	4	9	5	0	116	43.45%	
General																				
Pass	3	11	6	4	3	6	7	2	5	18	10	26	20	18	22	26	71	258	60.00%	
Fail	0	14	4	5	9	10	10	2	12	20	7	20	16	20	5	1	17	172	40.00%	
Total																				
Pass	3	14	18	14	12	20	22	20	21	39	34	70	71	47	55	39	123	622	59.35%	
Fail	1	16	12	14	18	31	34	23	30	44	15	42	46	35	30	8	27	426	40.65%	
Total	4	30	30	28	30	51	56	43	51	83	49	112	117	82	85	47	150	1048		
% Pass (Year)	75%	47%	60%	50%	40%	39%	39%	47%	41%	47%	69%	63%	61%	57%	65%	83%	82%	59%		
Total Elections	4	30	30	28	30	51	56	43	51	83	49	112	117	82	85	47	150	1,048		
Total for Successful Elections (\$ millions)	88.0	151.5	333.5	291.0	323.5	688.2	557.5	427.4	601.2	981.2	759.4	5,255.6	3,656.1	672.6	1,345.0	2,444.4	9,879.8	28,455.9		
Total for Failed Elections (\$ millions)	5.0	286.6	391.7	144.0	600.8	952.3	1,179.7	694.8	800.5	1,245.4	2,969.4	2,054.4	1,952.0	347.8	780.9	207.2	1,053.5	15,666.0		