



**2008 Fall Conference**  
**Legislative and Regulatory Update**  
*A review of the 2007-2008 Legislative Session*

**Statewide School Bond**

**Current and Future Status of Existing Bond Funds**

At the current rate of monthly apportionments for New Construction projects, which averages to \$180 million per month, it is estimated that the New Construction funds will be depleted prior to April 2009. However, Critically Overcrowded Schools (COS) funds that are unclaimed out of Proposition 47 should revert, by action of the State Allocation Board, to the New Construction fund. It is estimated that there will be at least \$400 million available in COS reversion funds. This estimate would defer the depletion of New Construction funds from April 2009 to June 2009, a year away from the earliest opportunity to seek a statewide bond since there will be no 2008 school bond. Statewide school bonds can only be put before voters at elections during even-numbered years as required by the California Constitution. Therefore, the next earliest opportunity to go to the voters to pass a school bond would be the primary election in June 2010.

**Future Challenge for C.A.S.H.: Level 3 Developer Fees**

The depletion of funds for new construction projects in mid-late 2009 will, by a statutory provision purposely enacted to protect school districts in such circumstances when the SAB no longer has new construction funds available to make apportionments, trigger Level 3 developer fees – where developers of proposed new residential developments pay 100 percent of the costs to build the necessary school facilities to house the students anticipated out of such developments – until the next statewide bond replenishes the state funds. The Government Code directs that state funds are not available *if* the State Allocation Board (SAB) is no longer making apportionments for new construction. The triggering of Level 3 developer fees is inevitable unless:

- The SAB determines that it has another source of funds to be able to continue making apportionments for new construction; or
- The statute is modified to amend or abolish the provisions relating to Level 3 fees

**C.A.S.H.-Sponsored Bills for 2007-2008**

**AB 1500 (Hancock): Modernization Grants**

AB 1500 seeks to make several changes to the Modernization grants, including statutorily linking the grants to the New Construction per pupil grants by the historic ration (43% of the New Construction grants). The bill also seeks to establish a modernization grant program for districts that expended modernization funding from January 1, 1999 to December 31, 2006 on seismic repair, replacement or reconstruction and did not have sufficient funds to modernize the facilities for current program needs.

Finally, AB 1500 seeks to reimburse school districts for the state's full share (60%) for additional costs to comply with the federal Americans with Disabilities Act.

*Status:*            *Held*  
*Position:*        *Sponsor*

**AB 2173 (Caballero): Developer Fees**

AB 2173 (Caballero) seeks to update the Level 2 developer fee laws to reflect current conditions and funding levels provided by the State under the School Facility Program. The bill represents an agreement brokered by C.A.S.H. and the California Building Industry Association (CBIA). The more significant provisions of AB 2173 include:

- Improvements to the criteria from which a district is eligible to assess Level 2 fees by changing the criteria that a district received a simple majority vote on a local bond measure from within the last four years to the last eight years, and adds a total bonding capacity of \$5 million or less as an additional criteria for eligibility. Retains the condition that a district must be eligible to participate in the School Facility Program and must meet at least two of five conditions, including the aforementioned;
- Ability of districts to use current CDE school site size standards when calculating site acquisition costs for Level 2 fees;
- Ability of districts to include specified new construction supplemental grants in the calculation of Level 2 fees, including supplemental grants for project management assistance, labor compliance programs, general site allowance, geographic location, and fire code compliance.
- Ability of the public to request a meeting with the school district to review the facility needs analysis, requiring the district to respond to those requests.
- Ability of districts to use 10 years of historic data when determining student yield factors.

*Status:*            *Awaiting Governor Action*  
*Position:*        *Sponsor*

**AB 2864 (DeLeon): Renewable Energy Technology**

AB 2864 (DeLeon) seeks to provide greater incentives for school districts to invest in renewable energy technologies in an effort to achieve grid neutrality (net zero energy consumption). The bill requires that a school district transfer savings resulting from the installation and use of a renewable energy component, such as photovoltaic systems, into the district's restricted capital outlay account until the technology is repaid in full, at which point the district may opt to retain those funds in the general fund for ongoing general fund purposes.

*Status:*            *Held*  
*Position:*        *Sponsor*

**SB 35 (Torlakson): Joint Use Program**

SB 35 expands the types of projects eligible for funding under the Joint-Use Program to include CTE facilities and shops and physical education facilities and site development for outdoor recreational areas. The bill also allows for a joint-use partner to contribute, as part of its required contribution, equipment to a CTE project; however, this contribution is limited to 10% of the eligible project costs.

*Status:*            *Vetoed*  
*Position:*        *Sponsor*

## **SB 1354 (Torlakson): Funding for Complete Schools**

SB 1354 requires the Superintendent of Public Instruction (SPI) to examine:

1. Facilities standards to ensure that they are sufficient to deliver an education program compliant with State content standards.
2. School facilities funding provided by the State and matched equally by local school districts and whether the funding has been sufficient to provide the facilities necessary to deliver an education program compliant with State content standards.
3. Factors within school districts that enable or preclude them from building facilities sufficient to deliver an education program compliant with State content standards.

The evaluation required by SB 1354 has never been done before, which is to say that no prior study of school facilities has examined them for their ability to deliver the education curriculum required by the State. SB 1354 would help to inform a future, comprehensive study on the grant levels and what the state expects school districts to build for the students of California.

*Status: Awaiting Governor Action*

*Position: Sponsor*

## **Key Facilities Bills in 2007-2008**

### **School Facility Program (SFP)**

#### AB 100 (Mullin): New Construction Grants

AB 100 provides grant increases to the new construction grants, inclusive of special day class grants, of five (5) percent and four (4) percent in January 2009 and January 2010, respectively. Provides that new construction projects that included grants for special education may apply for and receive a supplemental grant to account for the six (6) percent increase to the new construction grants provided by the SAB in May 2008 for projects filed between January 1, 2008 and December 31, 2008.

*Status: Awaiting Governor Action*

*Position: Support*

#### AB 168 (Berg): Minimum Essential Facilities

AB 168 adds a section to the Education Code to address Minimum Essential Facilities (MEFs) and specifically authorizes funding for schools that lack MEFs or MEFs that do not meet square footage standards. The bill requires the Superintendent of Public Instruction, in consultation with the OPSC, to establish MEF standards and a definition of MEFs, including but not limited to square footage. Funding would be apportioned on a square footage calculation as determined by the board. The bill limits funding to the construction, expansion or reconfiguration of MEFs and authorizes the board to prioritize funding for MEFs. The State and local share would be 50% unless the district is eligible as a Financial Hardship district.

*Status: Held*

*Position: Support*

AB 260 (Fuller): Project Management Assistance

AB 260 provides additional funding to small school districts for project management assistance for projects approved by the State Allocation Board after January 1, 2008. The bill allows districts to contract with design professionals, general contractors, construction managers, and state-approved inspectors if no conflict of interest exists, as well as authorizes districts to contract for pre-construction services, bid phase services, construction phase services, and project close-out services.

*Status: Held*  
*Position: Support*

AB 818 (Krekorian): Per-Pupil Grant Annual Adjustments

AB 818 authorizes the State Allocation Board to adjust the New Construction and Modernization base grants by the construction cost index that is in effect at the time of the bid opening for the first phase of construction or nine months after the date of apportionment, whichever occurs first, if:

The bid opening occurred after the apportionment;  
A fund release has been requested; and  
The adjustment would result in an increase to the grant;

The grant adjustments pursuant to the proposed legislation would not impact developer fees. The amendments, which were adopted when the bill was heard by the Senate Education Committee, mirror former Assembly Member Lynn Daucher's bill from 2005, AB 539.

*Status: Held*  
*Position: Support*

AB 1011 (DeSaulnier): Modernization Eligibility, MTYRE

AB 1011 reduces the time for which a district can receive Modernization funding of a district-owned 25-year-old permanent school building by one year for every three years of use on an MTYRE schedule. Includes a sunset date of January 1, 2012.

*Status: Held*  
*Position: Support*

AB 1014 (Bass): New Construction Eligibility

AB 1014 authorizes the State Allocation Board to supplement the cohort survival enrollment projection (CSEP) method, which shall be available to school districts, with:

Anticipated students yielded by valid tentative tract maps;  
Alternative weighting mechanisms to the CSEP developed with DOF;  
Birth rate data for kindergarten and first grade cohorts.

The bill also authorizes a five- or 10-year projection and the use of student residency for districts that establish their eligibility based on high school attendance areas for students reported in the district's CBEDS.

*Status: Signed, Chapter 691, Statutes of 2007*  
*Position: Support*

AB 1395 (Coto): New Construction Eligibility

AB 1395 provides that the ongoing eligibility of any school district is not reduced as a result in the adjustment in enrollment projections for a period of 3 years from the date of eligibility approval by the Board if the school district, except for those with an average daily attendance of less than 2,500 pupils, has exhausted all alternatives of projecting enrollment. The bill would require that before a district can freeze its eligibility, it must have submitted an alternative enrollment projection method to the Department of Finance and the Office of Public School Construction, which was subsequently denied.

*Status: Held*  
*Position: Support*

AB 1450 (Brownley): Replacement Buildings, Reconfiguration

AB 1450 requires the board to provide a supplemental grant for 50% of the replacement cost of an existing building if a school district proposes to demolish the building and replace it with a multi-story building on the same site if, among other things, the cost of the demolition of the building on the same site is less than the cost of providing a new school facility and if the pupil capacity is increased on a district-wide basis. The bill allows school districts to reconfigure a school site to serve a different grade level (i.e., convert an elementary school site to a high school site), and would be required to adjust its New Construction eligibility by the number and type of pupils the new site serves. The bill precludes districts from receiving funding under the new provisions if it received previous New Construction funding under the SFP. If the existing building received state Modernization funding, the cost-benefit analysis to determine eligibility under these provisions must include a prorated value of the Modernization apportionment for the period of time the building was in use.

*Status: Held*  
*Position: Watch*

AB 1490 (Mendoza): New Construction Eligibility, Portable Classrooms

AB 1490 allows a school district to subtract from its capacity calculations for ongoing New Construction eligibility pupils housed in district-owned portable classrooms that are at least 30-years-old and would require that they be replaced with permanent facilities. The bill requires that the portable classrooms be removed from the school site and removed from use of service as a classroom within the district within six months of occupancy of the new facility. The portable classroom, furthermore, cannot be used to determine a district's eligibility for the Overcrowding Relief Grant (ORG) Program, established by Proposition 1D. C.A.S.H. sponsored a similar measure in 2006, SB 1203 (Morrow), to address the issue of the continued use of portable classrooms that are beyond their useful lives.

*Status: Held*  
*Position: Support*

AB 1545 (Parra): Financial Hardship Program

AB 1545 requires the State Allocation Board to evaluate the eligibility criteria for Financial Hardship status, focusing on districts with low assessed valuation. The bill requires that the Board provide a report to the Legislature by July 1, 2008.

See *Regulatory Update* at the end of this report for Administrative efforts to reform the Financial Hardship Program.

*Status: Held*  
*Position: Support*

AB 1841 (Coto): Small Schools

AB 1841 (Coto) reestablishes the Small Schools Program under the School Facility Program and authorizes up to \$200 million from Proposition 1D funding for this purpose. The Small High School Program sunsetted on January 1, 2008.

*Status: Held*  
*Position: Watch*

AB 2087 (DeLaTorre): Multi-Track Year-Round Education

AB 2087 (DeLaTorre) repeals the Education Code provisions to operate multi-track year-round education on January 1, 2020.

*Status: Held*  
*Position: Watch*

AB 2936 (Mullin): Site Acquisition

AB 2936 (Mullin) provides that the State Allocation Board shall reimburse a school district for fifty percent of the costs of acquiring a school site based on the lesser of the appraised value of the land within six months before the acquisition or the actual cost of the acquisition. Current law requires the Board to reimburse districts for 50 percent of the lesser of the appraised value of the land within six months of *an application for funding* or the actual cost of acquisition.

*Status: Held*  
*Position: Support*

SB 121 (Romero): MTYRE Operational Grants “Hit”

Commencing with the 2007-08 school year, SB 121 exempts a school district that received MTYRE Operational Grants in the 2006-07 fiscal year from having to increase the school building capacity by the number of pupils that otherwise would have been reported by the Superintendent for that grade level, and requires the school district to demonstrate annually that the new construction eligibility will be used to construct projects that will reduce the dependence of the district on MTYRE programs. The bill provides that a school district that received funding under the program during the 2006-07 fiscal year is eligible for operational grant funding for a period of 3 years after receiving an apportionment under the School Facility Program utilizing the new construction eligibility retained. The bill would repeal the Operational Grant program on January 1, 2012.

*Status: Vetoed*  
*Position: Support*

SB 176 (Denham): MTYRE Operational Grants “Hit”

SB 176 exempts school districts that receive MTYRE Operational Grants from reducing their new construction eligibility by the number of pupil grants received under the program if the district can demonstrate that it will house those pupils within three years with funding other than funds from the 2006 statewide bond.

*Status: Held*  
*Position: Watch*

SB 465 (Lowenthal): MTYRE

SB 465 repeals the statute that reduces an elementary school district's new construction eligibility by 6% if the district does not have a substantial percentage of its students on MTYRE. The bill further repeals the exemption to reduce new construction eligibility for districts that receive MTYRE Operational Grants.

*Status: Held*  
*Position: Support*

SB 658 (Romero): MTYRE Operational Grants "Hit"

SB 658 phases out the MTYRE Operational Grants Program over a four-year period beginning with the 2008-09 fiscal year by reducing operational grant funding by 20 percent each year. The bill requires that the funds retained in the State's General Fund by the phasing out MTYRE Operational Grants Program shall be reallocated to the Charter School Facility Grant Program administered by the California Department of Education. SB 658 also restores the SFP new construction eligibility that is otherwise required to be reduced for districts that receive MTYRE Operational Grants in the 2007-08 fiscal year. This bill has an urgency clause, which means that it is effective upon the date that the Governor signed the bill.

*Status: Signed, Chapter 271, Statutes of 2008*  
*Position: Support*

SB 704 (Ducheny): Per Pupil Grants, Special Education

SB 704 requires the State Allocation Board to increase the Special Education grants by six percent and to provide subsequent increases to Special Education grants whenever the New Construction base grants are increased. The bill also provides retroactive adjustments for projects that received apportionments on or after July 1, 2006.

*Status: Held*  
*Position: Support*

SB 1552 (Margett): State Allocation Board

SB 1552 (Margett) proposes to reorganize the State Allocation Board by reducing the number of legislative members from each house from three to two, and increasing the number of gubernatorial appointments to three members with staggered terms. The bill also proposes to transfer the Office of Public School Construction from the Department of General Services to the State Allocation Board effective January 1, 2009.

*Status: Held*  
*Position: Watch*

SB 1556 (Ducheny): Eligibility

SB 1556 (Ducheny) authorizes the State Allocation Board to permit an elementary school district that meets the following criteria to calculate its eligibility for new construction funding based on a provision that is otherwise applicable only to high school attendance areas:

- Has an average daily attendance exceeding 20,000 pupils,
- Has at least 37 schools,
- Has a boundary of at least 100 square miles, and

That is located within a high school district with at least 12 high schools.

*Status:*            *Awaiting Governor's Action*  
*Position:*        *Watch*

**SB 1605 (Cox): Re-Use of Plans**

SB 1605 (Cox) requires the State Allocation Board to purchase stock architectural plans and make them available to school districts to encourage re-use of plans. The bill will prohibit a school district from using new construction grants for the design of new schools if the district opts not to use the stock plans made available by the State Allocation Board. C.A.S.H. and others held meetings with Senator Cox to express concerns and opposition to the bill. Senator Cox subsequently pulled his bill.

*Status:*            *Held*  
*Position:*        *Oppose*

**SB 1657 (Romero): Facility Needs**

SB 1657 (Romero) requires the Office of Public School Construction to develop a school facilities database and develop a facilities survey instrument, approved by the State Allocation Board and developed in consultation with an advisory committee, that would be required of school districts as a condition of receiving state Deferred Maintenance funding.

*Status:*            *Held*  
*Position:*        *Watch*

**Public Contracting and Public Works Projects**

**AB 396 (Hernandez): Bid Preference**

AB 396 (Hernandez) requires public agencies in awarding public works contracts to reduce a bid by 2.5 percent, for purposes of comparing prospective bidders and letting a contract, if a contractor and each of the contractor's subcontractors certify that they contribute at least 6.5 percent of the aggregate Social Security wage to their employees' health benefits. C.A.S.H. has expressed concern to the Building Trades Council, the bill's sponsor, about the potential cost implications of the bill. Specifically, AB 396 may compel a school district to award a contract to a contractor whose bid was higher than the lowest responsible bidder to whom the contract is required to be awarded under current law.

*Status:*            *Held*  
*Position:*        *Oppose*

**AB 983 (Ma): Plans and Specifications, Implied Warranty**

AB 983 requires local public entities to provide full, complete and accurate plans and specifications and cost estimates to potential bidders and before entering into contracts for public works projects. Under current case law, in order for a contractor to recover losses that result from incomplete, misrepresented, or concealed information on plans and specifications, he or she must prove that the awarding body affirmatively misrepresented or concealed information upon which the contractor relied to provide a bid. AB 983 seeks to undo case law by abrogating the contractor's responsibility to meet this legal threshold.

*Status:*            *Awaiting Governor's Action*  
*Position:*        *Oppose*

AB 2002 (DeLeon): Withholdings

AB 2002 (DeLeon) increases the penalties imposed on contractors and subcontractors for failure to comply with prevailing wage laws. Specifically, the bill increases the penalty for failure to pay prevailing wages from \$50 per day to \$100 per day, and increases the penalty for not submitting required certified payroll records from \$25 per calendar day to \$50 per calendar day.

*Status: Awaiting Governor's Action*

*Position: Watch*

AB 2177 (Bass): Labor Compliance Representatives

AB 2177 would require the Department of Industrial Relations (DIR) to train independent personnel and furnish them with \$25 identification badges for purposes of ensuring that proper prevailing wages are paid on all public works projects, including school construction projects. C.A.S.H. opposes AB 2177 for the following reasons because school construction projects funded with certain state bond funds are already subject to continuous monitoring to ensure compliance with prevailing wage laws and regulations as a result of the enactment of AB 1506 (Wesson) in 2002 that required school districts to initiate and enforce labor compliance programs for school public works. Furthermore, C.A.S.H. is concerned about the lack of agency oversight and accountability for the Labor Compliance Group Representatives as prescribed by AB 2177.

*Status: Held*

*Position: Oppose*

AB 2288 (Torrico): Automatic Fire Suppression Systems

AB 2288 prohibits any person from installing fire sprinklers or fire sprinkler systems without first being registered with the State Fire Marshal or enrolled in approved apprenticeship programs. Additionally, the June 16 version of the bill added a provision to authorize the issuance of a stop work order if such work is performed without the bill's required certification.

*Status: Held*

*Position: Oppose*

AB 2995 (Davis): Inspector of Records

AB 2995 (Davis) will require school Inspectors of Record (IOR) to be employed and provided by the Department of General Services rather than be directly contracted for by a school district. The Professional Engineers of California Government (PECG) is sponsoring this bill. C.A.S.H. expressed strong opposition to the bill because of the cost implications resulting from the additional layer the bill will add to an already complex process of building schools. Moreover, PECG and Assembly Member Davis have argued that the bill seeks to remove the potential for conflicts of interest, but have been unable to cite any examples of wrongdoing relative to IORs in school public works. C.A.S.H. argued that the bill is onerous, costly to the state and local districts, and unnecessary. As a result of the wide coalition of opposition to the bill, Assembly Member Davis pulled the bill.

*Status: Held*

*Position: Oppose*

SB 191 (Padilla): Proposition 1D, Labor Compliance Programs

SB 191 requires the State Allocation Board to increase apportionments for projects that receive SFP funds to pay a DIR fee of .025 percent of the state apportionment. The bill further prohibits the voluntary continuation of district labor compliance programs.

*Status: Awaiting Governor's Action*

*Position: Oppose*

**Energy Efficiency, Renewable Energy, and Green Buildings**

AB 2030 (Lieu): Zero Net Energy Buildings

AB 2030 (Lieu) requires the State Energy Resources Conservation and Development Commission to adopt, in collaboration with specified parties, building design and construction standards, and energy and water conservation standards to new nonresidential construction commenced on or after January 1, 2030, to be zero net energy buildings. C.A.S.H. submitted a letter to the author informing him of its opposition to the bill unless AB 2030 is amended to exempt school districts from its provisions.

*Status: Held*

*Position: Oppose Unless Amended*

**Financing**

AB 1908 (Wolk): Surplus Property, Dixon USD

AB 1908 (Wolk) authorizes the Dixon Unified School District, in order to avoid receivership, to sell its surplus farmland previously used as the school farm, and requires the district to deposit a portion of the proceeds of the sale into the general fund and the remaining balance into its capital account. The District would be prohibited from financial hardship assistance under the School Facility Program from July 1, 2008, to June 30, 2010. C.A.S.H. traditionally has opposed any erosion of the firewall between capital outlay and general fund revenues and expenditures; however, due to the fiscal solvency issue relating to the Dixon Unified School District, C.A.S.H. took a neutral position on the bill.

*Status: Awaiting Governor's Action*

*Position: Neutral*

AB 1934 (Ma): Surplus Property, San Francisco USD

AB 1934 (Ma) authorizes the San Francisco Unified School District to deposit the proceeds of the sale of surplus school property, together with any personal property located on that property, purchased entirely with local funds and sold between November 1, 2007 and October 31, 2011 into the school district general fund, and to use those proceeds for any one-time general fund purpose. The bill also exempts the district from staying out of the School Facility Program for 10 years as required under current law. AB 1934 prohibits the district from financial hardship eligibility under the Deferred Maintenance Program and would reduce any future state financial hardship grant by the amount equal to the proceeds of the sale of the site. C.A.S.H. traditionally has opposed any erosion of the firewall between capital outlay and general fund revenues and expenditures.

*Status: Held*

*Position: Oppose*

AB 2027 (Swanson): Routine Restricted Maintenance Account

AB 2027 (Swanson) authorizes school districts to deposit 2 percent of their general fund expenditures into the Routine Restricted Maintenance Accounts for the 2008-2009 fiscal year. The bill re-enacts SB 409 (Hollingsworth) for the upcoming fiscal year, which C.A.S.H. opposed in 2003 as part of its tradition of opposing any erosion of the firewall between capital outlay and general fund revenue and expenditures.

*Status: Held*  
*Position: Oppose*

AB 2197 (Mullin): Non-Voter Approved Debt

AB 2197 (Mullin) requires school districts and county offices of education to notice certain local and state entities 30 days prior to approving the issuance of non-voter approved debt, such as certificates of participation, that are secured by real property. Those entities shall be required to provide public comment to the governing boards of the school district or county office of education as to the ability of the district to repay the debt.

*Status: Signed, Chapter 128, Statutes of 2008*  
*Position: Watch*

AB 2832 (Fuller): Routine Restricted Maintenance Account

AB 2832 (Fuller) authorizes school districts, without impacting their ability to access state facility funding, to deposit 1.5 percent of total general fund expenditures into their Routine Restricted Maintenance Accounts (RRMA) for the 2008-2009 and 2009-2010 fiscal years. The bill specifies that funds diverted from the RRMA may not be used to expand existing programs or increase salaries. Assembly Member Fuller is authoring ABx3 19 this year, as well, which contains an urgency clause that authorizes the same reduced deposit into the RRMA for the 2007-2008 fiscal year. As in the case of AB 2027 (above), C.A.S.H. opposes the bill, and ABx3 19, as it erodes the firewall between capital outlay and general fund expenditures and revenues.

*Status: Held*  
*Position: Oppose*

SB 1447 (Yee): Surplus Property, San Bruno Park SD

SB 1447 (Yee) authorizes the San Bruno Park School District to use \$1.4 million of the proceeds from the sale of a specific surplus property for any one-time general fund expenditure and exempting the district from the current 10-year restriction for state facility funding. Instead the bill authorizes the district's eligible financial hardship apportionment to be reduced by \$1.4 million until the district's capital outlay account is repaid in full. The district is required to repay its capital outlay account over a period of no more than 10 years. During such time that the encumbered site sale proceeds are not restored to the district's capital outlay account, the district is required to use the interest earned from the remaining proceeds from the sell to repay the account for the encumbered funds, and would be required to expend all its local capital outlay funds before requesting new construction or modernization funding from the state.

*Status: Awaiting Governor's Action*  
*Position: Oppose*

## **Environmental**

### AB 2332 (Furutani): School Siting, Railyards

AB 2332 (Furutani) prohibits the construction or expansion of any railyard if the construction is within 440 yards of a school or the expansion will result in the railyard being within 440 yards of a school. The bill prohibits a railyard that, on January 1, 2009, is located within 440 yards of a school from expanding those facilities that are within 440 yards of the school.

*Status: Held*  
*Position: Support*

### AB 2655 (DeSaulnier): Indoor Air Quality

AB 2655 (DeSaulnier) requires the Air Resources Board, in consultation with other state agencies including the Division of the State Architect and the Office of Public School Construction, to develop emission standards or indoor air pollution control measures for school districts for specified conditions, such as mold, allergens and noise. The bill requires the Board to develop emission standards or control measures for two source categories by July 15, 2010. AB 2655 further requires school districts to either contract with or use employees who are certified by specified organizations to maintain or repair HVAC systems. As currently drafted, the bill imposes a state mandate. A similar measure was introduced in 2005 that C.A.S.H. opposed because of the onerous nature of the bill and the certain increased costs associated with having to contract out for certified technicians to maintain and repair HVAC systems, much of which can be done with existing personnel. For the same reasons, C.A.S.H. opposes AB 2655.

*Status: Held*  
*Position: Oppose*

### AB 2720 (Levine): CEQA

AB 2720 (Levine) presumes an environmental impact report or negative declaration to be compliant if an administering agency that was noticed by a lead agency fails to either respond to the notice or identify existing facilities that may potentially emit hazardous substances. The bill further defines that such hazardous substances include toxic air contaminants.

*Status: Signed, Chapter 148, Statutes of 2008*  
*Position: Support*

### AB 2729 (Ruskin): Underground Storage Tanks

AB 2729 (Ruskin) allows the use of the Underground Storage Tank Trust Fund to clean up underground storage tanks (UST) on school property. Currently there is no steady source of funds for existing school site clean-up. This bill provides one source of funds for one of the environmental clean-up issues that arises on existing school sites. Specifically, AB 2729 establishes the School District Account under the trust fund for claims filed by school districts that have a 4<sup>th</sup> rank on the UST Trust Fund ranking list. For three fiscal years, beginning in 2009-2010, \$10 million will be transferred to the School District Account for this purpose.

*Status: Awaiting Governor's Action*  
*Position: Support*

SB 1165 (Kuehl): Environmental Impact Reports

SB 1165 (Kuehl) would require a lead agency to prepare an environmental impact report (EIR) or supplemental EIR for a project if the prior certified EIR for the project is more than five years old. C.A.S.H. opposes SB 1165 unless it is amended to exempt projects funded under the School Facility Program due to the rigorous CEQA processes that complex school construction projects adhere to, particularly when seeking state funding. School districts sometimes opt to phase school projects, which can result in exceeding five years in the planning, as well as school districts often tier off of the land use authority's underlying CEQA compliance. SB 1165 would negatively impact a school district's ability to plan already complex school construction projects, and could result in significant delays and cost increases to districts and the state.

*Status: Held*

*Position: Oppose Unless Amended*

SB 1277 (Maldonado): Synthetic Turf

SB 1277 (Maldonado), as introduced, sought to require that school districts first obtain a site specific environmental impact report from the Office of Environmental Health Hazards Assessment before installing or using synthetic turf on playfields or parks. C.A.S.H. opposed the bill. The bill has been amended to require specified state agencies to publish a report, accessible online, about the environmental and public health impacts of synthetic and natural turf.

*Status: Awaiting Governor's Action*

*Position: Neutral*

SB 1468 (Oropeza): School Siting, Freeways

SB 1468 (Oropeza) prohibits the approval by the governing board of a school district of the acquisition of a school site that is located within 500 feet from the edge of the closest traffic lane of a freeway or other busy traffic corridor, unless the environmental health and safety agency of the district, as defined, determines through analysis pursuant to specified statutory provisions that the health and safety risks posed by the air quality at the proposed site are less than significant. The bill removes the authority of a governing board to approve a school site within 500 feet of a freeway or traffic corridor due to overriding considerations. C.A.S.H. opposes SB 1468 because it is too restrictive and does not account for instances where there are no other feasible, alternative school sites available to a district.

Recent amendments to the bill further complicate the siting process by giving flexibility only to districts which have a separate environmental health and safety agency. In addition, despite the author's stated intent, the bill continues to apply to sites which have already been acquired if the entire approval process is not complete.

*Status: Held*

*Position: Oppose*

SB 1507 (Oropeza): School Siting, Freeways

SB 1507 (Oropeza) prohibits the California Transportation Commission from building or expanding a state highway within one-quarter mile of a school site unless the project is specifically exempted. Such exemptions provided by the bill include exemptions for carpool lanes and reconfigurations of highways that will not increase the capacity of the freeway. C.A.S.H., on an earlier version of the bill before the exemptions were proposed, supported the bill and requested that regional transportation agencies be subject to the bill.

*Status: Held*

*Position: Support with Amendment*

## Career Technical Education

### SB 1248 (Wyland): CTE

SB 1248 (Wyland), in an earlier iteration, sought to make significant reforms to career technical education, including reforms for teacher credentialing and school facilities. C.A.S.H. opposed the bill because the bill seemed to be giving a facilities preference to career technical education facilities when school districts grapple with existing resources just to provide adequate classrooms and ancillary space. SB 1248 has since been amended to encourage the State Superintendent and the State Board of Education to consider ways to expand career technical education in public schools.

*Status: Held*  
*Position: Watch*

### SB 1327 (Wyland): CTE

SB 1327 (Wyland) allows the local contribution to a career technical education project under the School Facility Program to include donated equipment, materials and labor. C.A.S.H. sponsored SB 35 (Torlakson) last year to allow for the inclusion of donated equipment as part of the local contribution for joint use career technical education facilities, and therefore, support the concept of such inclusion in the broader Career Technical Education Facilities Program. We have expressed concerns, however, about the complexity of including donated labor and materials as part of a contribution relative to preparing a bid solicitation, as well as being able to ensure that donated materials meet rigorous school building standards.

*Status: Held*  
*Position: Watch*

## Regulatory Issues

### **Financial Hardship Program**

The OPSC is currently reviewing the Financial Hardship Program to address technical issues raised by the SAB as a result of recent items deliberated by the Board, as well as to improve and reform the program moving forward based on findings and recommendations made by the Macias Consulting Group's "Evaluation of the OPSC Financial Hardship Review Program" presented to the SAB at the September 26, 2007 SAB meeting. In addition to discussions at several SAB Implementation Committee meetings, OPSC established two other groups to review the financial hardship program. The Financial Hardship work group was tasked with looking at the short-term, technical issues such as how to account for encumbrances and expenditures for financial hardship districts. The Reform Group has been tasked with the broader areas of program reform identified in the report submitted to the SAB in September 2007 such as determining the financial status of a district for purposes of program eligibility and the level to which a district can contribute local resources to capital outlay projects. The Implementation Committee is currently vetting the issues brought forth by the work group, dealing largely in the areas of revenue, expenditures, encumbrances, and when and for how long a district is eligible for financial hardship.

For details on the ongoing discussions at the SAB Implementation Committee, visit the *Latest News* section of the C.A.S.H. website (Implementation Committee Notes) at [www.cashnet.org](http://www.cashnet.org) or the OPSC website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov).

## **Material Inaccuracies**

The State Allocation Board (SAB), at the February 27, 2008 SAB meeting, requested that the Office of Public School Construction (OPSC) review policies relating to material inaccuracies, vet the item through the Implementation Committee, and bring the item back to the Board. Specifically, the Board asked that the OPSC review the policy on how to assess interest payment penalties on projects cited for material inaccuracy and the prohibition to self-certify projects. At the September 5, 2008 Implementation Committee, OPSC presented policies that were revised to address comments and concerns expressed by members of the Implementation Committee and public at prior meetings where material inaccuracy was discussed.

### Loss of Self-Certification, Recommendations to the SAB

It was agreed that OPSC would include in its reports to the SAB more detailed information on the percentage of construction expenditures under contract, as well as a recommendation of the loss of self-certification of up to five years as to encourage the Board to exercise its discretion. A major area of concern that arose was the issue of reinstating a district's ability to self-certify once the penalties owed have been paid in full by the district as is authorized in statute but is not reflected in regulation. This issue, although widely discussed, has not been resolved and OPSC maintains its position that the regulations – the omission of what is authorized in statute – does not countervail law.

### Determination of Interest Penalties and Recovery of Interest

The following scenarios on the issue of interest calculations and the recovery of interest were presented to the SAB. Scenarios 1 and 2 have the consensus of OPSC and practitioners, while there are still outstanding concerns over Scenario 3 expressed by members of the Implementation Committee and public.

#### **SCENARIO 1:** No interest penalties apply.

District signed Fund Release without 50% of the work in the plans and specifications under contract, but met the 50% threshold before the warrant was issued.

#### **SCENARIO 2:** Interest penalties are calculated from the date of the warrant to the date the district met the 50% threshold.

District signed Fund Release without 50% of the work in the plans and specifications under contract and premature warrant was released. District met the 50% threshold before the 18-month substantial progress time limit requirement.

#### **SCENARIO 3:** Interest penalties are calculated from the date of the warrant to the date the SAB approves the item for apportionment rescission.

District signed Fund Release without 50% of the work in the plans and specifications under contract and premature warrant was released. District did not meet the 50% threshold before the 18-month substantial progress time limit requirement. Project approval is considered invalid as is the fund release.

Two significant concerns were expressed over Scenario 3: (1) the fairness of the policy and the ability of the SAB to distinguish districts in this scenario that did move forward with a construction project (and made construction progress payments) versus districts that never built a project; and (2) the ability of districts to receive adjusted Modernization grants pursuant to the annual inflationary adjustments in the cases of Modernization projects in this scenario where districts can rescind a project and re-apply. OPSC is recommending to the SAB that such projects be limited to the grant amounts provided in the initial project.

### **Joint Use Program: Project Funding Caps**

At the July 2008 State Allocation Board meeting, Dave Walrath requested that the SAB direct staff to review the regulatory funding caps of the Joint Program. Under current regulations, joint use projects for elementary schools are capped at \$1 million, middle school projects are capped at \$1.5 million, and high school projects are capped at \$2 million. These funding caps have not been adjusted for inflation since they were enacted. The SAB agreed to look at the matter. At the September 5, 2008 Implementation Committee, OPSC presented a study methodology to review and analyze the issue that includes the following:

- A review of all prior apportionments based on estimated total project costs
- A review of the types of projects, separated by Type 1 and Type 2 projects
- A review of square footage (eligible versus built)

### **Overcrowding Relief Grant (ORG)**

The SAB approved amendments to the Overcrowding Relief Grant (ORG) regulations at the June 25, 2008 SAB meeting to address an issue raised by a Financial Hardship district that was precluded from accessing ORG funds when it was otherwise eligible because the regulations required that in ORG cases where a site was being acquired through condemnation the district demonstrate ownership of the site prior to a site acquisition request. The regulations in cases of financial hardship districts, therefore, impeded access to ORG funds. The proposed amendments to the ORG regulations, which are pending final approval from the Office of Administrative Law, would allow financial hardship districts to receive advance site funding under the ORG program. The amendments also included two additional funding cycles for the ORG program, July 31, 2009 and January 29, 2010. The OPSC anticipates that the new regulations will be effective for the next funding cycle in January 2009.

### **AB 1014: Enrollment Projection Methods, Options**

New enrollment projection options for purposes of determining new construction eligibility under the School Facility Program (SFP) were made available to districts with the passage of AB 1014 (Bass) in 2007. The implementing regulations were approved by the SAB on June 25, 2008 and are pending final approval by the Office of Administrative Law. It is anticipated that the new regulations will be available for the 2008 deadline to update SFP eligibility. The options provided under AB 1014 and the implementing regulations are as follows:

#### Enrollment Reporting for High School Attendance Areas or Districtwide

- Districts may project on a five- or 10-year basis
- Districts may use the traditional cohort survival enrollment projection method; or
- Subject to a determination of which yields the most accurate projection, districts may use alternative cohort weighting schemes – no weighting or reverse weighting – or may provide a custom weighting scheme that is justified and substantiated by the district.
- Districts may augment the cohort projection with proposed residential dwelling units and birth rates for the kindergarten cohort

## Districtwide Enrollment and High School Attendance Area Residency Reporting

Districts may project on a five- or 10-year basis

Districts may use the traditional cohort survival enrollment projection method

The enrollment projection augmentations or alternative weighting schemes are neither available to districts that project on a 10-year basis nor for districts that report on a high school attendance area *residency* basis.

For details on the options available from AB 1014, visit the OPSC website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov).

### **Storm Water and Water Conservation Proposal**

On July 2, 2008, the Orange County Superior Court issued a writ of mandate ordering the State Water Resources Control Board (SWRCB) and the Los Angeles Regional Water Quality Control Board (LA RWQCB) to suspend all activities relating to the implementation, application and enforcement of water quality standards in the LA RWQCB's Basin Plan. Specifically, the Court directs the State and Regional water boards to, "...cease, desist and suspend all activities relating to the implementation, application and/or enforcement of the Standards in the Basis Plan, as applied or to be applied to Storm Water, whether through TMDLs or other Basin Plan amendments or regulations, or through the NPDES permits, water quality policies or otherwise..." The Court specified that these prohibitions are to remain in effect until the standards have been reviewed and revised.

This is a significant development and will have immediate implications for entities currently regulated within the LA RWQCB's geographic region. Furthermore, although this ruling addresses specific issues related to LA RWQCB's development of water quality standards and enforcement activities, it very well may have broader implications for SWRCB and RWQCB policy and enforcement practices. Specifically, the question of the effect that this writ of mandate could have on the adoption of new statewide storm water permits remains a key if unanswered question. The State Board has stated that they will clarify this and other questions concerning the implications of the Court's decision for the content of future general permits.

In related matters, the State Water Resources Control Board (SWRCB) is now considering developing an urban water conservation regulatory program with the goal of reducing 20% in per capita water use statewide by 2020, and the SWRCB has scheduled two workshops in September and October to discuss their objectives and take public input. The first SWRCB workshop is focused on establishing a baseline of urban water use that will serve as the basis for determining the 20% reduction in water usage. The second workshop will consider whether to develop a regulatory program, and if so, what the regulatory program should be. Ian Padilla will attend both workshops to represent C.A.S.H.



## 2008 Legislation SIGNED/VETOED

### SIGNED

#### AB 1908 (Wolk): Surplus Property, Dixon USD

AB 1908 (Wolk) authorizes the Dixon Unified School District, in order to avoid receivership, to sell its surplus farmland previously used as the school farm, and requires the district to deposit a portion of the proceeds of the sale into the general fund and the remaining balance into its capital account. The District would be prohibited from financial hardship assistance under the School Facility Program from July 1, 2008, to June 30, 2010. C.A.S.H. traditionally has opposed any erosion of the firewall between capital outlay and general fund revenues and expenditures; however, due to the fiscal solvency issue relating to the Dixon Unified School District, C.A.S.H. took a neutral position on the bill.

#### AB 2197 (Mullin): Non-Voter Approved Debt

AB 2197 (Mullin) requires school districts and county offices of education to notice certain local and state entities 30 days prior to approving the issuance of non-voter approved debt, such as certificates of participation, that are secured by real property. Those entities shall be required to provide public comment to the governing boards of the school district or county office of education as to the ability of the district to repay the debt.

#### AB 2720 (Levine): CEQA

AB 2720 (Levine) presumes an environmental impact report or negative declaration to be compliant if an administering agency that was noticed by a lead agency fails to either respond to the notice or identify existing facilities that may potentially emit hazardous substances. The bill further defines that such hazardous substances include toxic air contaminants.

#### AB 2729 (Ruskin): Underground Storage Tanks

AB 2729 (Ruskin) allows the use of the Underground Storage Tank Trust Fund to clean up underground storage tanks (UST) on school property. Currently there is no steady source of funds for existing school site clean-up. This bill provides one source of funds for one of the environmental clean-up issues that arises on existing school sites. Specifically, AB 2729 establishes the School District Account under the trust fund for claims filed by school districts that have a 4<sup>th</sup> rank on the UST Trust Fund ranking list. For three fiscal years, beginning in 2009-2010, \$10 million will be transferred to the School District Account for this purpose.

#### SB 658 (Romero): MTYRE Operational Grants "Hit"

SB 658 phases out the MTYRE Operational Grants Program over a four-year period beginning with the 2008-09 fiscal year by reducing operational grant funding by 20 percent each year. The bill requires that the funds retained in the State's General Fund by the phasing out MTYRE Operational Grants Program shall be reallocated to the Charter School Facility Grant Program administered by the California Department of Education. SB 658 also restores the SFP new construction eligibility that is otherwise required to be reduced for districts that receive MTYRE Operational Grants in the 2007-08 fiscal year.

This bill has an urgency clause, which means that it is effective upon the date that the Governor signed the bill.

SB 1277 (Maldonado): Synthetic Turf

SB 1277 (Maldonado), as introduced, sought to require that school districts first obtain a site specific environmental impact report from the Office of Environmental Health Hazards Assessment before installing or using synthetic turf on playfields or parks. C.A.S.H. opposed the bill. The bill has been amended to require specified state agencies to publish a report, accessible online, about the environmental and public health impacts of synthetic and natural turf.

SB 1556 (Ducheny): Eligibility

SB 1556 (Ducheny) authorizes the State Allocation Board to permit an elementary school district that meets the following criteria to calculate its eligibility for new construction funding based on a provision that is otherwise applicable only to high school attendance areas:

- Has an average daily attendance exceeding 20,000 pupils,
- Has at least 37 schools,
- Has a boundary of at least 100 square miles, and
- That is located within a high school district with at least 12 high schools.

**VETOED**

AB 100 (Mullin): New Construction Grants

AB 100 provides grant increases to the new construction grants, inclusive of special day class grants, of five (5) percent and four (4) percent in January 2009 and January 2010, respectively. Provides that new construction projects that included grants for special education may apply for and receive a supplemental grant to account for the six (6) percent increase to the new construction grants provided by the SAB in May 2008 for projects filed between January 1, 2008 and December 31, 2008.

AB 983 (Ma): Plans and Specifications, Implied Warranty

AB 983 requires local public entities to provide full, complete and accurate plans and specifications and cost estimates to potential bidders and before entering into contracts for public works projects. Under current case law, in order for a contractor to recover losses that result from incomplete, misrepresented, or concealed information on plans and specifications, he or she must prove that the awarding body affirmatively misrepresented or concealed information upon which the contractor relied to provide a bid. AB 983 seeks to undo case law by abrogating the contractor's responsibility to meet this legal threshold.

AB 2002 (DeLeon): Withholdings

AB 2002 (DeLeon) increases the penalties imposed on contractors and subcontractors for failure to comply with prevailing wage laws. Specifically, the bill increases the penalty for failure to pay prevailing wages from \$50 per day to \$100 per day, and increases the penalty for not submitting required certified payroll records from \$25 per calendar day to \$50 per calendar day.

AB 2173 (Caballero): Developer Fees

AB 2173 (Caballero) seeks to update the Level 2 developer fee laws to reflect current conditions and funding levels provided by the State under the School Facility Program. The bill represents an agreement brokered by C.A.S.H. and the California Building Industry Association (CBIA). The more significant provisions of AB 2173 include:

- Improvements to the criteria from which a district is eligible to assess Level 2 fees by changing the criteria that a district received a simple majority vote on a local bond measure from within the last four years to the last eight years, and adds a total bonding capacity of \$5 million or less as an additional criteria for eligibility. Retains the condition that a district must be eligible to participate in the School Facility Program and must meet at least two of five conditions, including the aforementioned;
- Ability of districts to use current CDE school site size standards when calculating site acquisition costs for Level 2 fees;
- Ability of districts to include specified new construction supplemental grants in the calculation of Level 2 fees, including supplemental grants for project management assistance, labor compliance programs, general site allowance, geographic location, and fire code compliance.
- Ability of the public to request a meeting with the school district to review the facility needs analysis, requiring the district to respond to those requests.
- Ability of districts to use 10 years of historic data when determining student yield factors.

SB 191 (Padilla): Proposition 1D, Labor Compliance Programs

SB 191 requires the State Allocation Board to increase apportionments for projects that receive SFP funds to pay a DIR fee of .025 percent of the state apportionment. The bill further prohibits the voluntary continuation of district labor compliance programs.

SB 1354 (Torlakson): Funding for Complete Schools

SB 1354 requires the Superintendent of Public Instruction (SPI) to examine:

1. Facilities standards to ensure that they are sufficient to deliver an education program compliant with State content standards.
2. School facilities funding provided by the State and matched equally by local school districts and whether the funding has been sufficient to provide the facilities necessary to deliver an education program compliant with State content standards.
3. Factors within school districts that enable or preclude them from building facilities sufficient to deliver an education program compliant with State content standards.

The evaluation required by SB 1354 has never been done before, which is to say that no prior study of school facilities has examined them for their ability to deliver the education curriculum required by the State. SB 1354 would help to inform a future, comprehensive study on the grant levels and what the state expects school districts to build for the students of California.

SB 1447 (Yee): Surplus Property, San Bruno Park SD

SB 1447 (Yee) authorizes the San Bruno Park School District to use \$1.4 million of the proceeds from the sale of a specific surplus property for any one-time general fund expenditure and exempting the district from the current 10-year restriction for state facility funding. Instead the bill authorizes the district's eligible financial hardship apportionment to be reduced by \$1.4 million until the district's capital outlay account is repaid in full. The district is required to repay its capital outlay account over a period of no more than 10 years. During such time that the encumbered site sale proceeds are not restored to the district's capital outlay account, the district is required to use the interest earned from the remaining proceeds from the sell to repay the account for the encumbered funds, and would be required to expend all its local capital outlay funds before requesting new construction or modernization funding from the state.

## **State Water Resources Control Board: Urban Water Conservation Regulatory Program**

### Background

On February 28, 2008 Governor Schwarzenegger established a goal to achieve a 20% reduction in per capita water use statewide by 2020. On July 16, 2008 the SWRCB adopted the *Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*, which includes an assessment of whether any or all of the 14 Best Management Practices (BMP) identified in the *California Urban Water Conservation Council (CUWCC) Memorandum of Understanding* should be mandated through a regulatory program. The State Water Resources Control Board (SWRCB) is now considering developing an urban water conservation regulatory program with the goal of reducing a 20% in per capita water use statewide by 2020.

### Summary

The SWRCB has identified the following as the criteria they will use to determine which approach they will utilize:

- The potential for making significant water savings
- The ability to establish well-defined criteria for regulatory purposes
- The ability of water suppliers to implement the measures

The SWRCB asked the following questions to frame the discussion:

- What should the scope of the program be?
- Should the program apply to all areas of the state or only to areas subject to certain criteria?
- Would a performance-based program, one which allows latitude for urban water suppliers to select the practices to meet specified water use reductions, be an effective approach?
- Are water pricing structures the most effective conservation measure to mandate on a statewide basis?
- What data are available to support mandating particular water conservation practices and estimating the potential water savings associated with those measures?

The SWRCB enumerates the following as possible approaches they may adopt:

- Mandating compliance either with performance-based water conservation standards or with specific prescriptive water conservation management practices
- Conduct adjudicative proceedings to consider whether to place specific water conservation conditions in water right permits and licenses
- Limit activities to taking individual enforcement action against urban water suppliers suspected of wasting water
- Some combination of these three alternatives.

Specifically, the SWRCB is considering requiring installation of water meters and the billing of water according to the amount of water used. The SWRCB has identified the following options for water rate structures:

- Constant or uniform volume charge (volumetric rate remains constant regardless of the quantity consumed)
- Seasonal rate (volumetric rate reflects seasonal variation in water delivery costs)

Increase block rate aka “tiered rate” (quantities of water purchased are divided into ranges or “tiers” and the volumetric rate for each tier increases for each succeeding tier purchased)

Allocation-based rate (the consumption tiers and respective volumetric rates are based on water use norms and water delivery costs established by the utility)

### Informational Workshops

The first SWRCB workshop is focused on establishing a baseline of urban water use that will serve as the basis for determining the 20% reduction in water usage. Due to regional differences in climate and commercial and industrial characteristics, it is necessary to establish a baseline water use on a hydrological regional basis and establish water conservation targets reflecting regional factors. The SWRCB staff has drafted two documents that provide data and methodologies for establishing baseline water use and statewide and regional conservation targets, which will be made available at the workshop for public review. The second workshop will consider whether to develop a regulatory program, and if so, what the regulatory program should be.

***Cities of Arcadia, et.al. v. State Water Resources Control Board, et.al.***  
**(Orange County Superior Court Case No. 06CC02974)**

Summary of Court's Decision

On July 2, 2008, the Orange County Superior Court issued a writ of mandate ordering the State Water Resources Control Board (SWRCB) and the Los Angeles Regional Water Quality Control Board (LA RWQCB) to suspend all activities relating to the implementation, application and enforcement of water quality standards in the LA RWQCB's Basin Plan. Specifically, the Court directs the State and Regional water boards to, "...cease, desist and suspend all activities relating to the implementation, application and/or enforcement of the Standards in the Basis Plan, as applied or to be applied to Storm Water, whether through TMDLs or other Basin Plan amendments or regulations, or through the NPDES permits, water quality policies or otherwise..." The Court specified that these prohibitions are to remain in effect until the standards have been reviewed and revised.

Basis for Court's Decision

Water Code section 13241 provides that each regional water board in the process of establishing water quality objectives must consider a number of factors including but not limited to "past, present, and probable future beneficial uses of water," as well as economic considerations and water quality conditions that "could reasonably be achieved."

The Court found that the LA RWQCB had not analyzed the reasonableness of its water quality standards or the Water Code section 13241 factors as they relate to storm water. The Court found further that the LA RWQCB's triennial review of its Basin Plan is the appropriate vehicle for analyzing the reasonableness of water quality standards and Water Code section 13241 factors. As a result, the Court concluded that the LA RWQCB must consider the following factors:

1. The reasonableness of water quality standards as they apply to storm water, and
2. Economic impacts and other factors contained in Water Code section 13241. The Court also concluded that the Basin Plan inappropriately included "potential" use designations applicable to storm water.

Implications of Court's Decision

This is a significant development and will have immediate implications for entities currently regulated within the LA RWQCB's geographic region. Furthermore, although this ruling addresses specific issues related to LA RWQCB's development of water quality standards and enforcement activities, it very well may have broader implications for SWRCB and RWQCB policy and enforcement practices. Specifically, the question of the effect that this writ of mandate could have on the adoption of new statewide storm water permits remains a key if unanswered question. The State Board has stated that they will clarify this and other questions concerning the implications of the Court's decision for the content of future general permits.

