



Preliminary Guidance:
How to Calculate Proposition 39 Facilities Fees

Background

Though Proposition 39 requires school district to provide facilities to charter schools, there is no such thing as a free lunch, and Proposition 39 permits school districts to charge charter schools for a pro-rata share of some district facilities costs that the district pays from unrestricted funding sources.

Proposition 39 (specifically Education Code Section 47614(b)(1)) generally provides as follows regarding charter school facilities charges:

The school district may charge the charter school a pro rata share (based on the ratio of space allocated by the school district to the charter school divided by the total space of the district) of those school district facilities costs which the school district pays for with unrestricted general fund revenues. The charter school shall not be otherwise charged for use of the facilities.

The apparent intent of this provision is to require charter schools to contribute toward facilities costs from their general-purpose funding sources to the same extent as school districts. Many had anticipated that these costs would be low because the vast majority of facilities costs are paid with restricted revenues (e.g., local and state facilities bond funds, developer fees, etc.). In practice CSDC is currently hearing of costs estimates that vary widely, from less than \$1/square foot per year to over \$3/square foot per year (one district calculated a fee of over \$27 per square foot, which we hope is simply an arithmetic error).

A Simple Equation?

On its face, this seems relatively simple. School districts providing facilities under the term of Proposition 39 should simply calculate their facilities costs paid from their unrestricted general funds, divide this figure by total district facilities square footage, and multiply the result by the square footage provided to the charter school:

$$\frac{\text{Total District Facilities Costs Paid from Unrestricted General Fund}}{\text{Total District Facilities Square Footage}} \times \text{Charter Square Footage} = \text{Fee}$$

In practice, however, calculating the fee is not so simple.

Many districts lack data on the square footage of their facilities, especially if the district does not participate in state school facilities funding programs. Short of taking a tape measure to each of the district's buildings, perhaps other proxies, such as average daily attendance or number of classrooms could be used if mutually agreeable. For fee calculation purposes, schools that share facilities with common areas (e.g., libraries, gyms, auditoriums, etc.) are supposed to split the square footage of the common space on a pro-rata basis, according to the relative proportion of space reserved for the exclusive use of the charter school and other occupants.

Most of the difficulty in calculating an appropriate fee, however, relates to calculating the total district costs for facilities paid from the district's unrestricted general fund revenues (the numerator in the above equation). The regulations governing Proposition 39 provide some additional guidance, but leave many other questions to be resolved. They define "facilities costs" as "those costs associated with facilities acquisition and construction and facilities rents and leases, consistent with definitions in the California School Accounting Manual." In addition, according to the regulations, "facilities costs also includes the contribution from unrestricted general fund revenues to the school district deferred maintenance fund (see description of this below), costs from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, and costs from unrestricted general fund revenue for replacement of furnishings and equipment according to school district schedules and practices."

General Practice Tips

School districts and charter schools that intend to follow these regulations should consider the following issues when calculating the charter facilities fee:

- The analysis should focus on the district's general fund. This is one of several funds that districts maintain and it contains the vast majority of the district's operating revenues and expenses. Only those expenditures paid from unrestricted general fund revenue sources should be included.
- The California School Accounting Manual may provide some guidance on the above-referenced definitions, but additional analysis is likely necessary because the categories and definitions in the manual, despite their detail, do not necessarily align with those in Proposition 39 or related regulations. (The manual is available on line: <http://www.cde.ca.gov/fiscal/sacs/csam/>) Pages 401-16 on, in particular, may be helpful.
- Though districts generally try to avoid entering into debt that is repaid from their unrestricted general fund, many districts do so for a variety of reasons. Some such debt may be backed or collateralized by facilities, but the proceeds of the debt are sometimes used for non-facilities purposes (e.g., purchase school busses). Non-facilities debt service expenditures should be excluded from the analysis.

- It is probably appropriate to inquire whether the district earns any general fund revenues related to facilities (e.g., facilities sale or lease income) and, if appropriate, subtract such income from expenditures to yield true cost data.

Who Should Pay For "Ongoing" and "Deferred" Maintenance?

Deferred maintenance and related expenses are likely to be the largest items in most districts' facilities cost totals. The state has two major maintenance-related facilities programs. The first, the state's deferred maintenance program, provides districts with state matching funds if the district contributes one-half of one percent of its general fund revenues into a deferred maintenance **fund** that is separate from the district's general fund. Districts are not required to participate in this program, though many do.

Second, districts (except for small ones) that receive state facilities bond funds are required to set aside funding to ensure that their state-supported facilities are adequately maintained. Such districts must contribute an amount equal to either 2 or 3 percent of their general fund revenues into a restricted maintenance **account**. This is an account that is within the district's general fund. The percentage varies depending on whether the district received funding under the current (3 percent) or prior (2 percent) state school facilities aid programs. This 2 to 3 percent contribution, though calculated on the basis of general fund expenditures, can be made from any source, including but not limited to unrestricted general fund revenues. Charter schools should only be required to contribute toward those costs paid by the district from unrestricted funds. Districts are generally required to spend these funds on "regular maintenance and routine repair" (old facilities aid laws) or "ongoing and deferred maintenance" (new facilities aid laws).

The extent to which charter schools should contribute toward these maintenance costs probably depends on how much of the "ongoing" and/or "deferred" maintenance responsibilities are assumed by the charter school. Following typical landlord-tenant practice, the regulations governing Proposition 39 generally call for charter schools to assume responsibility for "**ongoing** operations and maintenance of facilities and furnishings and equipment." They call for districts to assume the responsibility for "**deferred** maintenance." Though the term "ongoing maintenance" is not defined in the law. The Education Code generally defines "deferred maintenance" as:

. . . major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead containing materials, and any other items of maintenance approved by the State Allocation Board.

The State Allocation Board's regulations, in turn, further define "deferred maintenance" in a somewhat circular fashion as "the repair or replacement work performed on school facility

components that is not performed on an annual or on-going basis but planned for the future and part of the [district's mandated] Five Year [deferred maintenance] Plan."

Thus it appears that the intent is that charter schools assume responsibility for those facilities maintenance items that a district would normally perform on a regular (annual or more frequent) basis and that districts should assume responsibility for those items that are performed less frequently. If so, the calculation of the costs that should be shared by the charter school should be based on the district's expenses for "deferred maintenance" paid with unrestricted general fund revenues. This will likely include all unrestricted general fund matching monies paid by the district from the general fund (excluding match paid from restricted general fund sources). It might also include some, but probably not all, general fund expenditures from the restricted maintenance account because such expenditures are usually for a mix of "ongoing" and "deferred" maintenance. Charter schools and facilities-providing districts may need to engage in some fine-grained analysis to decide which expenditures appropriately belong in the numerator of the "simple" equation illustrated above.

Furnishings and Equipment

The appropriate level of charter school contribution toward district expenditures on replacement of furnishings and equipment will also vary depending on the extent of furnishings and equipment provided by the district to the school and whether the school assumes any responsibility for replacing them. Though the law calls for districts to provide facilities that are "furnished and equipped," there is no clear understanding about the amount or type that must be provided.

The regulations meant to clarify this are similarly vague and state that a facility is "'furnished and equipped' if it includes all the furnishings and equipment necessary to conduct classroom-based instruction (i.e., at a minimum, desks, chairs, and blackboards)." These regulations seem to leave unanswered whether the facilities should be furnished and equipped with other standard items beyond desks, chairs, and blackboards such as telephones, copy machines, faxes, computers, printers, etc.

Here too, charter schools and district staff will likely need to engage in a bit of fine-grained analysis and agree on a reasonable definition of "furnished and equipped." Since the law calls for sharing the "replacement" cost, presumably the original purchase of such furnishings and equipment should not be included in the charter cost calculation. Whatever understanding is reached, charter schools should only contribute toward district-wide unrestricted general fund expenditures to replace such furnishings and equipment.

Counting Bricks and Beans

Due to the wide variance in the ranges of per-square-foot charges quoted by districts, and due to the fact that most of the relevant data is contained in the district's electronic accounting data systems, charter school and district staff should work jointly to reach a common understanding of how to calculate the charges. To reach agreement on a reasonable per-square-foot charge, we offer the following practice suggestions for charter schools and districts:

- First, district and charter school staff should read and review the laws and especially regulations governing the per-square-foot charges.
- Second, meet to discuss and hopefully agree on a specific set of definitions and methods for calculating the district's general fund facilities costs and whether reliable district-wide facilities square footage data is available.
- Third, district accounting staff could use the agreed-upon definitions to initially identify costs that appear to count toward total district facilities costs. This could generate both a total figure, plus a detailed explanation of the methodology used to identify the items (e.g., account codes used, the types of items included, etc.). This could also include a list of the major items included in the total cost figure and a joint analysis of whether the included items are appropriate. For each item, the reviewers should first ask (1) whether they were paid from unrestricted general fund sources and (2) whether the expenditure was for one or more of the following:
 - Facilities acquisition
 - Facilities rents, leases
 - Debt service on facilities
 - Deferred maintenance
 - Unrestricted general fund contribution to deferred maintenance fund (excluding state match funds or contributions paid with restricted general funds)
 - Other deferred maintenance expenses
 - Replacement of furnishings and equipment

If a review of any expenditure items yields a "no" to either 1 or 2, they should be excluded from the cost calculation. In larger districts, this list of transactions could be very lengthy, so reviewing a sample, and focusing primarily on "big ticket" items may yield a reasonable result without engaging in microanalysis of thousands of transactions.

- Fourth, do the math. Divide the district-wide facilities costs identified by district-wide square footage, and multiply by the charter share of square footage to yield a total charge.

According to the regulations, these calculations should be based on district data for the fiscal year prior to occupancy; so current fiscal year (2002-03) data is relevant for the upcoming, 2003-04 fiscal year. Since the current fiscal year is far from over, it may be necessary to review and adjust these calculations after the district closes its books for the fiscal year. This may be especially important during this fiscal year because the state has significantly relaxed deferred and ongoing maintenance matching requirements as part of the mid-year budget cut legislation. As a result, many districts may opt not to contribute toward the maintenance matching programs/requirements and initial budget assumptions may not reflect actual practice.

Timing and Process

The Proposition 39 regulations call for districts to provide a preliminary space and cost proposal to charter schools and then provide charter schools with an opportunity to respond to the preliminary proposal. The regulations did not specify when this should occur, but did specify that a subsequent "final" proposal should be submitted no later than April 1. In

practice, it appears that many districts struggled to meet the "final" April 1 deadline and many skipped the preliminary proposal step. As a result, many charter schools and districts are now faced with tight deadlines.

The regulations call for the charter school to notify the district by the latter of May 1, or 30 days after the final proposal, regarding whether the school will accept the facility. The school may withdraw or change its response up to the deadline, but after then is committed to occupying the facility if it accepts (subject to substantial financial penalties if it fails to generate the requisite average daily attendance). Regulations that would have created a dispute resolution process were "withdrawn" by the State Board after the state Department of Finance objected to their potential for generating state-reimbursable mandated costs.

With no formal dispute resolution mechanism, charters and districts that are experiencing difficulty in reaching agreement have limited options, probably including (1) further informal negotiations and/or (2) going to court. To date, there is little precedent on Proposition 39 implementation matters, save for one lower court case (www.cacharterschools.org/pdf_files/Aurora_Decision.pdf).

Triple Net?

The regulations governing Prop 39 call for charter schools and districts to enter into a use agreement. The agreement is supposed to address space allocation, cost, liability, and other matters. The regulations also state that the school and district "may negotiate separate agreements and/or reimbursement arrangements for specific services not considered part of facilities costs . . . such services may include, but are not limited to, the use of additional space and operations, maintenance, and security services." Presumably these might also include utilities, grounds keeping, janitorial, etc.

One Size Fits All?

Many districts previously have established a variety of facilities arrangements with existing charter schools and these arrangements may vary widely from "rent free" to full market value rent, and an equally broad range of maintenance and support arrangements. The regulations governing the per-square-foot charges state that they "shall be applied equally by the school district to all charter schools that receive facilities under this article. On their face, the regulations seem to prohibit differential fees, presumably without regard to whether the schools are "conversion" or "new start" schools and without regard to the level of maintenance responsibilities assumed by the charter school. We do believe, however, that substantial variance in the fees may be justified in those cases where the level of maintenance responsibilities assumed by the schools varies and where the amount of furnishings and equipment varies—provided that the variance in the fees is directly related and attributable to costs and responsibilities assumed by the schools.

Basic background information on Proposition 39, along with a copy of the relevant laws and regulations are available on our web site. The basic laws are found in Education Code Section 47614 (www.cacharterschools.org/lawpolicy.html -- click on "Charter Schools Act," and scroll down to 47614) and the regulations are also available on the CSDC web site

(<http://www.cacharterschools.org/facilities.html>). CSDC welcomes comments and questions on this and other Proposition 39-related implementation matters and we will publish additional guidance on Proposition 39 in the future as conditions warrant.

-Eric Premack

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