

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-709
	:	
of	:	October 5, 1979
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Edmund E. White	:	
Deputy Attorney General	:	
	:	

SUBJECT: COMMUNITY COLLEGE SCHOOL FACILITY—Plans for construction of a community college school facility, which is to be financed entirely by “local” funds, are subject to review and approval by the Chancellor only in accordance with such standards as established pursuant to Education Code section 81836.

The Chancellor of the California Community Colleges has requested an opinion on a question that we have rephrased as follows:

What is the scope of review by the Chancellor’s Office of the “plans” for the construction of a community college facility that is subject to Education Code section 81837 but is to be financed entirely by “local” funds?

CONCLUSION

The plans for construction of a community college school facility, which is subject to Education Code section 81837 but which is to be financed entirely by “local” funds, are subject to review and approval by the Chancellor only in accordance with such standards as he has established pursuant to Education Code section 81836. Plans for such an entirely locally funded construction project of a community college district are not subject to review

or approval by the Chancellor as part of a “plan for capital construction” that is required of each community college district by Education Code section 81820. Such a construction project is neither subject to the standards of the Board of Governors of the California Community Colleges adopted pursuant to Education Code section 81821 nor to any other provision of Education Code section 81821 except that the construction project must be included in the annual “building inventory” report to the Chancellor as required by Education Code section 81821, subdivision (e). Such a locally funded construction project is not subject to any cost standards or construction standards formulated by the Chancellor pursuant to Education Code section 81805.

ANALYSIS

A community college district proposes to build a school facility, concededly subject to the provisions of section 81837, using only locally derived public funds. Education Code¹ section 81837 reads in full as follows:

“The governing board of each community college district, except districts governed by a city board of education, before letting any contract or contracts totaling twenty thousand dollars (\$20,000) or more, for the erection of any new community college facility, or for any addition to, or alteration of, an existing community college facility, shall submit plans therefor to the chancellor’s office, and obtain the written approval of the plans by the office. No contract for construction made by any governing board of a community college district contrary to the provisions of this section is valid, nor shall any public money be paid for erecting, adding to, or altering any facility in contravention of this section.”

We are required to harmonize several provisions of the Education Code, relating to the construction of school buildings, that are applicable to community college districts, to the Board of Governors of the California Community Colleges and to the Chancellor’s Office of the California Community Colleges.

The question presented seeks, in effect, to ascertain whether the scope of review by the Chancellor’s Office of “plans” for a construction project that is entirely locally funded is limited to determining whether such plans reveal compliance with “standards” established by the Chancellor pursuant to section 81836 or whether the review includes any or all of the elements specified in the Community College Construction Act of 1967 as originally enacted and as thereafter amended. (See § 81800 *et seq.*)

¹ All unidentified section references are to the version of the Education Code as it existed at the various times referred to in this opinion.

As an aid to following the discussion presented herein, we shall summarize the major conclusions that are to be derived from the applicable statutes. With respect to community college construction, two distinct statutes impose upon the Chancellor the duty to formulate or to adopt standards relating to the construction of community college facilities. By statute, the Chancellor is charged with different duties with respect to reviewing “plans” for construction in the light of those “standards” and of approving or disapproving such plans based upon their compliance with such standards, as they may be applicable. These duties serve different purposes and are not necessarily coextensive. The Chancellor is obligated to “establish standards” pursuant to subdivision (h) of section 81836, which standards each community college district *must comply with* if the cost of construction is \$20,000 or more. The Chancellor is further obligated to “formulate standards” pursuant to section 81805, which standards are to be utilized by the Chancellor in reviewing “plans for construction” of community college districts seeking state financial assistance for paying the costs of such construction. Each community college district need comply with section 81805 standards only as such compliance may be required to obtain any state financial assistance that it makes application for. Further, the Board of Governors of the Community Colleges, not the Chancellor, is charged with adopting other standards, as specified in section 81821, concerning a “plan for capital construction” required of each community college district. An entirely locally funded construction project is not subject to a condition precedent that it be part of such a plan of capital construction before it may be “approved” by the Chancellor but such a construction project must be included by a community college district in its report to the Chancellor of its “annual inventory of all facilities of the district,” as required by subdivision (e) of section 81821.

We start our analysis by stating that the fundamental rule of statutory construction is the determination of and the giving effect to the intent or purpose of the Legislature in adopting the statute. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) In ascertaining the legislative intent, the fact that the Legislature has reorganized the Education Code does not give its provisions new meanings. Insofar as such provisions remain substantially the same, they shall be construed as restatements and continuations and not as new enactments. (§ 3.) Further, “title, division, part, chapter, article, and section heading do *not in any manner* affect the scope, meaning, or intent of the provisions of [the Education] code.” (§ 5.) (Emphasis added.) (See generally, 4 Ops. Cal. Atty. Gen. 256 (1944) (pertaining to the effect of the repeal in 1943 of the School Code and the enactment of the Education Code of 1943); but see 14 Ops. Cal. Atty. Gen. 220 (1949).)

Section 81837, *supra*, provides that *any contract*, totaling \$20,000 or more, for the erection of any new community college facility or for any addition to, or alteration of, an existing community college facility shall not be valid unless the community college district proposing the project has obtained the written approval of the “plans” for such project from

the Chancellor’s Office, nor may any public money be spent on such a project until such approval has been obtained.

Section 81836 provides in relevant part that:

“The chancellor shall:

“.....

“(b) Establish *standards* for community college facilities.

“(c) Review all plans and specifications for all construction in every community college district *required to submit* plans and specifications therefor to it [sic] for approval.

“.....

“(d) Approve plans and specifications submitted by governing boards of community college districts, and return without approval and with recommendation for changes, any plans not conforming to established *standards*.

“.....

“(f) Employ experts, and clerical and stenographic assistants as may be required for expediting the checking and approving of plans and specifications.” (Emphasis added.)

As we shall explain more fully, sections 81836 and 81837 have been applicable to the construction of facilities by community college districts since 1929; their enforcement was within the jurisdiction of the Department of Education until 1974. In 1966 the Legislature enacted a Community College Construction Act and replaced that act in 1967 by the Community College Construction Act of 1967. As enacted, these provisions also were within the jurisdiction of the Department of Education. In 1967, the Legislature created the Board of Governors of the California Community Colleges and it authorized the establishment of the Chancellor’s Office. The Legislature, however, did not amend the Community College Construction Act of 1967 until 1971 so as to bring its enforcement within the jurisdiction of the Board of Governors of the Community Colleges and of the Chancellor’s Office. Then, in 1974, the Legislature charged the Chancellor’s Office with the enforcement of sections 81836 and 81837. However, in transferring in 1974 the authority and responsibilities set forth in sections 81836 and 81837 from the Department

of Education to the Chancellor's Office, the Legislature placed these two statutes among the original provisions of the Community College Construction Act of 1967.

Because section 81837 is located in the present Education Code among the provisions that were originally enacted as part of the Community College Construction Act of 1967, it appears to be merely a part of that act. However, careful historical analysis reveals that section 81837 has a significance independent of that act while at the same time it is intended to function in a manner that is compatible with the provisions of that act. Such historical analysis is difficult because of the fact that the Education Code has undergone four major reorganizations starting with 1929, including in each instance a complete renumbering of all extant provisions, as well as a relocation of many of such provisions within the codes. For convenience, we shall commence our inquiry at the point in time when the Legislature enacted the predecessor provisions of those sections now numbered 81836 and 81837.

In 1929, the Legislature collected most of the provisions relating to the public schools into one code, called the School Code. Although there was, prior to 1929, a provision regulating the letting of school building construction contracts, it was in 1929 that the Legislature first enacted a statute containing the provisions now found in section 81837, *supra*. These provisions have remained unchanged for fifty years, except for an occasional increase in the amount of dollars that subjected a school building construction contract to a "review of plans" by a state agency and except for changes as to which public entity should review those plans. As originally enacted in 1929, School Code section 6.61 (Stats. 1929, ch. 172) read as follows:

"It shall be the duty of the governing board of each school district, except districts governed by a city board of education, before letting any contract or contracts totaling five thousand dollars or more, for the erection of any new school building, or for any addition to, or alteration of, an existing school building, to submit plans therefor to the state department of education, and to obtain the written approval of such plans by the state department of education. No contract for building made by any governing board of a school district prior to the provisions of this section shall be valid, nor shall any public moneys be paid for erecting, adding to, or altering any school building in contravention of the provisions of this section."

The same legislative enactment (Stats. 1929, ch. 172) established a Division of Schoolhouse Planning in the State Department of Education. Among the duties of the Division of Schoolhouse Planning were the following:

“School Code § 2.1462. To establish standards for school buildings;

“School Code § 2.1463. To review plans and specifications of all school buildings, except in districts governed by a city board of education, . . . ;

“School Code § 2.1464. To approve plans and specifications submitted by governing boards of school districts, and to return without approval and with recommendations for changes, any plans nor conforming to established standards;

“School Code § 2.1465. To make all necessary provisions whereby governing boards of school districts, or architects engaged by them, may procure by purchase or otherwise, copies of standard specifications, plans and building codes prepared by the department”

Thus, the scope of review by the Division of Schoolhouse Planning of plans submitted to it by a public school district could be determined by reference to the provisions of the former School Code authorizing the Division to establish standards for school building construction: its duties included rejecting plans not conforming to the standards it established. Further, such review by the Division of Schoolhouse Planning was required irrespective of the *source* of funding for such school facilities. A comparison of the provisions of former School Code sections 2.2162, 2.1463, 2.1464 and 6.61 with the provisions of present Education Code sections 81836 and 81837 reveals no *substantive* differences whatsoever as to these specific requirements, thus raising an inference that absent some additional enactment by the Legislature during the succeeding 50 years, no change has in fact occurred with respect to the legislative intent.

In 1943, the Education Code replaced the School Code. School Code section 6.61, *supra*, became former Education Code section 18172, a part of article 2, chapter 3, division 9, entitled “Plans for Schoolhouses.” The separate School Code provisions relating to the duties of the Division of Schoolhouse Planning were consolidated into former Education Code section 18102. In 1959, the legislature reorganized the provisions of the Education Code. Education Code section 18172 became Education Code section 15409. Education Code section 18102 became Education Code section 15302. No change occurred with respect to the context in which these sections were found. The enforcement of these provisions remained with the Department of Education.

The import of these provisions as of 1959 has been stated by the California Legislative Counsel² to be as follows:

“We are informed by the Department of Education that . . . Section 15409 of the 1959 code was contemporaneously interpreted to authorize the Department of Education to review and approve plans on the basis of the building and structural designs, which consisted of the plans submitted. It was the department’s interpretation that, as used in Section 15409 of the 1959 code, approval of plans did not include the written approval based upon the department’s evaluation of the necessity or justification for building new facilities or alterations made to existing facilities.”

We assume, for purposes of this opinion, that this statement accurately reflects the administrative interpretation of section 15409 by the Department of Education.

At this point we shall delay further consideration of the history of sections 81836 and 81837 until we have discussed the history of two community college construction acts and related provisions.

In 1965, the Legislature enacted the Junior College Construction Act. (Stats. 1965, ch. 1272.) Former section 20015 defined a ‘project’ as meaning “the purpose for which a junior college district has applied for assistance under this chapter” Former section 20030 provided in part that “any junior college district may apply . . . for state assistance not to exceed the amount of entitlement computed for the district . . . to undertake one or more projects.” Former section 20040 provided that “the Legislature shall consider the requests for state assistance for junior college projects as contained in the Governor’s Budget, and shall determine the extent to which state assistance shall be provided.” Former section 20043 provided in part that “each project for which an appropriation is made shall be financed with both local and state funds . . . except that the state’s share shall not exceed the accumulated district entitlement.” Former section 20025 provided in part that “this chapter shall be administered by the Department of Education” and former section 20026 provided in part that “the duties of the department in administering this chapter shall

² Opinion of the Legislative Counsel, No. 13499, dated July 31, 1979, page 4. As we have noted, the language of former section 15409 has existed virtually unchanged since 1929 so that there is some question whether the department’s interpretation as of 1959 could be considered as a “contemporaneous” interpretation. The concept of contemporaneous administration construction generally applies to the implementation of a statute immediately subsequent to the enactment of the statute by the Legislature rather than at a time of a subsequent recodification of the code. However, a consistent administrative interpretation of a statute for 45 years is entitled to great weight in determining legislative intent.

include . . . approving plans and specifications for each project” Former section 20034 provided in part that “the projects transmitted [to the Department of Finance] shall be considered for inclusion in the Governor’s Budget for the [next] fiscal year.

During the 1966 First Extraordinary Session, the Legislature created the Capital Outlay Fund for Public Higher Education. (Stats. 1966, 1st Ex. Sess., ch. 155.) Former section 22510 provided in part that “a fund in the State Treasury is hereby created, to be known as the Capital Outlay Fund for Public Higher Education” All money in the Fund . . . shall be available, when appropriated by the Legislature, for expenditure for capital outlay purposes relating to public higher education including, but not limited to, acquisition of sites and construction of new institutions of public higher education thereon.” Former section 22512 provided in part that “for purposes of this chapter ‘public higher education’ shall consist of (1) all public junior colleges heretofore and hereafter established pursuant to law”

The Junior College Construction Act, *supra*, (Stats. 1965, ch. 1272; former Ed. Code, § 20010 *et seq.*) was replaced in 1967 by the Junior College Construction Act of 1967. (Stats. 1967, ch. 1550; former § 20050 *et seq.* and now denominated the Community College Construction Act of 1967, present § 81200 *et seq.*) Also in 1967, the Legislature repealed the Capital Outlay Fund for Public Higher Education, *supra*, (Stats. 1967, ch. 1550, § 4, p. 3722) and enacted the Junior College Construction Program Bond Act of 1968 (Stats. 1967, ch. 1555)³ whose purpose was stated in section 2 of said act to “provide the necessary funds to meet the major building construction, equipment and site acquisition needs of California public junior colleges. (Stats. 1967, ch. 1555, p. 3728.) The proceeds of the Junior College Construction Program Bond Act of 1968 were to “be used for major building construction, acquisition of equipment, and acquisition of sites for California public junior colleges under the Junior College Construction Act (ch. 18 (commencing with § 20010) of div. 14 of the Ed. Code), as it may be amended from time to time, or under any act enacted to succeed the Junior College Construction Act.” (Stats. 1967, ch. 1555, § 2, p. 3728.)

Of further significance, the Legislature in 1967 enacted the provisions creating the Board of Governors of the California Community Colleges and authorizing the establishment of the Chancellor’s Office. (Stats. 1967, ch. 1549.) However, the Legislature nevertheless gave administrative responsibility for implementing and enforcing the Junior

³ Statutes of 1972, chapter 937, the Community College Construction Program Bond Act of 1972, authorizing a maximum of \$160 million for the purposes of the Community College Construction Act of 1967, was adopted by the people at the general election held November 7, 1972. A subsequent bond authorizing act (Stats. 1975, ch. 1066) authorizing \$150 million for the same purposes, was rejected by the people at the primary election held June 8, 1976.

College Construction Act of 1967 to the State Board of Education and to the State Department of Education. (Stats. 1967, ch. 1550, p. 3717; see former Ed. Code, §§ 20054, 20065, 20066, 20076, 20077 for example.)

The Legislature did not vest jurisdiction with respect to the provisions of the Community College Construction Act of 1967 in the Board of Governors of the California Community Colleges and in the Chancellor's Office *until 1971*. (Stats. 1971, ch. 1525, p. 3020 *et seq.*)

In 1976, the Legislature again reorganized the Education Code. The provisions of the Junior College Construction Act of 1967 now appear in the 1976 Reorganized Education Code as the Community College Construction Act of 1967, section 81200 *et seq.* We shall now examine some of the relevant provisions of the Community College Construction Act of 1967 as they appear in the Reorganized Education Code of 1976.

Seven of the key provisions of the Community College Construction Act of 1967 are sections 81802, 81805, 81820, 81821, 81822, 81830 and 81831. For convenience we will start with section 81820 which provides that:

“On or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction for community college purposes of the district for the 10-year period commencing with that date. After January 1, 1975, the plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The plan shall be subject to continuing review by the governing board and each year shall be extended one year, and there shall be submitted to the chancellor, on or before the first day of February in each succeeding year, a report outlining the required modification or changes, if any, in the plan.”

Thus, this section: (1) required as of November 1, 1967, the preparation by each community college district of a 10-year plan for capital construction, to be submitted to the chancellor's office; (2) after January 1, 1975, amendment of the plan to reflect capital construction for *community college purposes* for the five-year period *commencing with the next proposed year of funding*; (3) each governing board shall continually review the plan and each year the plan shall be extended one year; and (4) in each succeeding year, on or before February 1, the governing board shall submit to the chancellor's office a *report* outlining the required modifications or changes, if any, in the plan.

Section 81821 provides that:

“The plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

“(a) The plans of the district concerning its future academic programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas to be emphasized.

“(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college within a district shall be made cooperatively by the Department of Finance and the community college district.

“(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors.

“(d) District office, library and supporting facility capacities as derived from the physical plant standards for office, library and supporting facilities adopted by the board of governors.

“(e) An annual inventory of all facilities of the district using standard definitions, forms, and instructions adopted by the board of governors.

Some of the relevant factors thus required to be included in the ‘plan for capital construction’ are (1) a projection of the district’s academic programs and subject matter areas to be emphasized in the future and their effect with respect to estimated construction needs; (2) data such as current enrollment capacity and projected enrollment; (3) an annual inventory of all facilities of the district using standard definitions, forms, and instructions adopted by the board of governors of the California Community Colleges; and (4) “district office, library and supporting facility capacities as derived from the *physical plant standards* for office, library and supporting facilities *adopted by the board of governors* of the California Community Colleges.

It is of critical import to note at this point that the obligation to adopt standard definitions, forms, instructions and physical plant standards, as required by section 81821 is imposed upon the Board of Governors of the California Community Colleges and *not* upon the Chancellor’s Office. Whereas, under section 81836 the duty to adopt certain standards is imposed upon the Chancellor’s Office.

The next section to be considered, section 81822, does impose an obligation upon the Chancellor's Office. Section 81822 provides that:

“The chancellor shall review and evaluate the plan for capital construction submitted by the governing board of each community *college* district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of such review and evaluation, make such revision and changes therein as are appropriate, and approve the same. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each district maintaining a community college shall be made on or before each succeeding first day of May. The chancellor shall, promptly after such approval, notify the governing board of each community college district of the approved form and content of the district's plan for capital construction.”

Thus, the Chancellor's duty pursuant to section 81822 is to review each district's plan for capital construction in terms of the elements of the capital construction program specified in section 81821, which elements are derived in part from section 81821 itself and from further requirements to be established by the Board of Governors of the California Community Colleges, rather than by the Chancellor.

The next critical section to be considered is section 81830 which provides that:

“Any community college district may submit to the chancellor for review and approval a proposed project. The proposed project shall be an element of the district's plan for capital construction. It shall be in such form and contain such detail, pursuant to rules and regulations of the board of governors, as will permit its evaluation and approval with reference to the elements of the capital construction program specified in Section 81821.”

A “project” is defined by section 81802 as follows:

“As used in this chapter, the term ‘project’ means the purpose for which a community college district has applied for assistance under this chapter for one or more institutions under its authority or for districtwide facilities. A project may include the acquisition and improvement of community college sites, the planning, construction, reconstruction, or remodeling of any permanent structure necessary for use as a classroom, laboratory, library, related facilities necessary for the instruction of students or for administration of the educational program, maintenance or utility

facilities essential to the operation of the foregoing facilities, and the initial acquisition of equipment. A project shall not include the planning or construction of dormitories, student centers other than cafeterias, stadia, the improvement of site for student or staff parking, or single-purpose auditoriums.”

The function of this section is to define what types of projects by community college districts shall be eligible for state financial assistance in paying for the project. However, its broad language, to wit: “. . . the term ‘project’ means the purpose for which a community college district has applied for assistance under this chapter . . . suggests that the *purpose of the chapter* is to establish a satisfactory method by which the Legislature may determine whether to provide state financial assistance to a particular project. We shall advert to this issue again.

In essence, section 81830, *supra*, authorizes a community college district, within its discretion, to submit a proposed project to the Chancellor for his review and approval. The proposed project “shall” be an element of the district’s plan for capital construction. The proposed project shall be in such form and shall contain such detail, pursuant to rules and regulations of the *Board of Governors*, as will permit the Chancellor to evaluate it with reference to the elements of the capital construction *program* specified in section 81821.

A parallel provision, section 81831, states the duty of the Chancellor with respect to a proposed project. Section 81831 provides that:

“The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821, and if approved after review by the Board of Governors of the California Community Colleges, shall transmit the approved proposed project to the Department of Finance not later than April 1, 1968, and May 1st of each year thereafter. A proposed project nor approved shall be returned to the governing board of the community college district with recommendations concerning changes deemed necessary by the chancellor.”

Thus, after review by the Chancellor, the proposed project must be reviewed and is subject to the approval of the Board of Governors of the California Community Colleges. If approved, the proposed project is to be transmitted to the State Department of Finance by the dates specified. The duties of the Department of Finance with respect to such a project are specified in section 81832. Sections 81831 and 81832 specify the procedure if the proposed project is not approved by any of the specified reviewing public entities. Several additional procedural time limits for submission of the project and its approval are specified by section 81833.

In setting forth these provisions, we passed over section 81805 intentionally. Section 81805 provides that:

“This chapter shall be administered by the chancellor, and for purposes of such administration the board of governors may adopt all necessary rules and regulations.

“For purposes of this chapter, the chancellor shall assemble statewide data on facility and construction costs, and on the basis thereof formulate cost standards and construction standards. The formulation of standards shall include also the formulation of average ratios of equipment cost to total project costs, unit equipment costs per faculty or other staff measure, and unit costs as related to floor areas.”

No section requires that a community college district comply with any of the cost standards or construction standards “formulated” by the Chancellor as contemplated by section 81805. No section states that the Chancellor shall approve a district’s construction plans only upon the condition that he determines that they comply with the standards formulated by the Chancellor pursuant to section 81805. Several of the sections of the Community College Construction Act of 1967 specifically condition the Chancellor’s approval upon the construction project’s meeting the “elements” specified in section 81821. Assuming that the Chancellor has formulated such standards, we believe that the intent of the Legislature is that such standards are to be formulated as a basis for evaluating plans for construction for which state financial assistance is requested, not as statewide standards to be required of all school facility construction. The latter function is performed by section 81837 if the cost of construction is \$20,000 or more.

Section 81834 provides that:

“Upon securing approval of a proposed project pursuant to *Sections 81831 and 81832*, the governing board of a community college may submit to the chancellor for approval preliminary plans for the project. In order that a project shall be eligible *for inclusion in the budget and the Budget Bill* submitted to the Legislature by the Governor at each regular session of the Legislature, the preliminary plans for the project shall be submitted by the governing board of the district to the chancellor prior to the first day of October each year preceding the commencement of such regular session” In the event that the governing board of a community college district *has decided to submit a request for funds for working drawings only*, in the first fiscal year, it may submit initial preliminary plans based upon the program for the project” (Emphasis added.)

Sections 81831 and 81832, referred to in section 81834, *supra*, are the sections that require: (1) the Chancellor to review and evaluate each proposed project with reference to the elements of the capital construction program *specified in section 81821*; (2) require approval of the Board of Governors of the California Community Colleges; and (3) require approval of the Department of Finance. We note again that there is no specific mention of section 81805 and the standards formulated by the Chancellor pursuant to its terms.

Section 81835 provides that the Chancellor shall review and evaluate preliminary plans for a project which, if approved, shall be submitted to the Department of Finance “not later than the 15th day of November each year.” We assume at this point that the preliminary plans of a proposed project, for which state financial assistance is sought, are subject to evaluation and review by the Chancellor in accordance with both section 81836 standards and section 81805 standards.

Section 81838 specifies that the review and evaluation of preliminary plans for a project by the Chancellor shall include certain fiscal considerations. Section 81839 *et seq.* provides for a determination of the state and district’s share of the cost of the project. Finally, section 81843 provides that:

“Portions of the state’s share of any project not appropriated to the community college district pursuant to Section 81841, may be included in the budget and the Budget Bill submitted by the Governor for either or both of the next two succeeding fiscal years, as determined by the Department of Finance.”

Section 81807 provides that:

“Funds appropriated for a project of a community college district for purposes of this chapter shall be allocated and disbursed upon order of the chancellor, and by warrants of the State Controller issued pursuant thereto.”

We believe that the language of these sections makes it clear that the statewide responsibility imposed upon the Chancellor by the provisions of the Community College Construction Act of 1967 is with respect to construction projects for which state financial assistance will be sought.

The major thrust of these provisions is to assure a methodology by which state funds may be distributed fairly and equitably to various community college districts to the extent that they make application for state financial assistance for construction projects. One of the devices utilized by the Legislature was the 10–year (now 5–year) plan for capital construction to be submitted to the Chancellor’s Office by each public community college

district. We do not believe that the Legislature intended that every modification of a school building costing \$20,000 or more that *might* be deemed necessary up to five or ten years in the future be set forth in the plan *as a condition precedent* to making such expenditures, if they were otherwise authorized to be expended. The intent of the Legislature was to assure that state funds not be provided for capital construction except after comprehensive review by the Chancellor's Office, the Board of Governors and the Department of Finance and then only after an appropriation by the Legislature, it having such approvals before it. We note that section 81802 provides that "as used in this chapter, the term 'project' means the *purpose for which a community college district has applied for assistance* under this chapter for one or more institutions under its authority or for districtwide facilities" (Emphasis added.) The concept of community college purposes as described in section 81802 is echoed in section 81820, to wit: "on or before November 1, 1967, the governing board of each community college district shall prepare and submit to the chancellor a plan for capital construction *for community college purposes* . . . for the 10-year period commencing with that date" (Emphasis added.)

Compare section 71072, "the board of governors [of the California Community Colleges) shall administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law" and section 71076, "the board of governors [of the California Community Colleges) shall establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes." For the full import of these provisions, see sections 71060 and 72280.

We have now set forth some of the legislative history of the Community College Construction Act of 1967 and focused upon some of its key provisions. We shall now return to the historical analysis of sections 81836 and 81837 and resolve the issue of their function in the context in which they are found in the Education Code. We previously stated that present sections 81836 and 81837 were numbered in the 1959 Education Code as sections 15302 and 15409. We further stated that their enforcement was vested in the Department of Education. We turn now to Assembly Bill No. 2398. (Stats. 1974, ch. 30.)

In 1973, Assembly Bill No. 2398 was introduced in the Legislature and was enacted into law in 1974. (Stats. 1974, ch. 30.) The legislative Counsel's Digest stated:

"AB 2398, as introduced, Vasconcellos (Ed.). Community College facilities.

"Transfers from State Department of Education to the Chancellor of the California Community Colleges, certain responsibilities re the acquisition of school sites and the planning and construction of school

facilities.

“Makes related changes.

“Vote: majority. Appropriation: no. Fiscal committee: yes. State mandated local program: no.”

Assembly Bill No. 2398 amended former sections 15302 and 15409 of the 1959 Education Code to make clear that the provisions of those sections pertained only to elementary and secondary school districts. Assembly Bill No. 2398 added two new sections to the 1959 Education Code, pertaining to community colleges. We shall refer to them momentarily by their section numbers, as they were enacted in 1974. However, these sections are now numbered sections 81836 and 81837, which are the sections at issue in this opinion.

“20080.1. The chancellor shall:

“(a) Advise the governing board of each community college district on the acquisition of new colleges sites, and, after a review of available plots, give the governing board of the district in writing a list of the approved locations in the order of their merit, considering especially the matters of educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction, and charge the governing board of the community college district a fee of twenty-five dollars (\$25) for each 10 acres or fraction thereof of school site reviewed.

“(b) Establish standards for community college facilities.

“(c) Review all plans and specifications for all construction in every community college district required to submit plans and specifications therefor to it for approval.

“The chancellor’s office shall charge community college districts for the review of plans and specifications, a fee of one-seventh of 1 percent of the estimated cost determined by the chancellor’s office except for those projects intended to be funded totally with district funds in which case a fee of one-twentieth of 1 percent will be charged. The minimum fee in any case shall be ten dollars (\$10).

“(d) Approve plans and specifications submitted by governing boards of community college districts, and return without approval and with recommendation for changes, any plans not conforming to established standards.

“(e) Make, upon the request of the governing board of any community college district, except a city board of education, a survey of the building needs of the district, advise the governing board concerning the building needs, suggest plans for financing a building program to meet the needs, and collect the cost of the survey, exclusive of the salaries of the state employees participating therein, from the district.

“(f) Employ experts, and clerical and stenographic assistants as may be required for expediting the checking and approving of plans and specifications.

“20080.2. The governing board of each community college district, except districts governed by a city board of education, before letting any contract or contracts totaling ten thousand dollars (\$10,000) or more, for the erection of any new community college facility, or for any addition to, or alteration of, an existing community college facility, shall submit plans therefor to the chancellor’s office, and obtain the written approval of the plans by the office. No contract for construction made by any governing board of a community college district contrary to the provisions of this section is valid, nor shall any public money be paid for erecting, adding to, or altering any facility in contravention of this section.”

The effect of these enactments was to vest jurisdiction in the Chancellor of the California Community Colleges rather than in the State Board of Education as to community college construction projects costing \$10,000 or more. Section 20080.1 of the 1959 Education Code is now section 81836 of the 1976 Education Code. Section 20080.2 of the 1959 Education Code is now section 81837 of the 1976 Education Code, except that the \$10,000 has become \$20,000.

Assembly Bill No. 2398, *supra*, also effected a change in the schedule of fees to be charged by the Chancellor’s Office, compared with the fee to be charged by the Department of Education, for the review of plans and specifications for construction of facilities. The fee to be charged by the Department of Education remained at one-twentieth of one percent of the estimated cost of the construction project. With respect to the fees to be charged by the Chancellor’s Office, subdivision (c) of section 20080.1 (as added by AB 2398) read:

“The chancellor’s office shall charge community college districts for the review of plans and specifications, a fee of one-seventh of 1 percent of the estimated cost determined by the chancellor’s office *except for those projects intended to be funded totally with district funds* in which case a fee of one-twentieth of 1 percent will be charged” (Emphasis added.)

Further, the Legislature added section 5 of Assembly Bill No. 2398 which read:

“Sec. 5. The Legislature hereby determines that local costs will be increased only for projects on which community college districts request state support from Community College Construction Act bond funds. Because requests for state funding participation are voluntary, the provisions of Section 2164.3 of the Revenue and Taxation Code do not apply to this legislation.”

These revised fee schedules and the language of section 5 of Assembly Bill No. 2398 thus become key elements in ascertaining the legislative intent with respect to the issues presented.

First, the Legislature expressly distinguished between projects that are fully locally funded and those seeking state financial assistance. As to those projects fully locally funded, it made no change in the amount of fees to be imposed for plans and specifications review by the Chancellor’s Office than were to be charged by the Department of Education for its plans and specifications review of construction projects within the elementary and secondary school system. The Legislature provided for an additional amount to be collected when the project was not intended to be funded totally with district funds. In section 5 of Assembly Bill No. 2398, the Legislature acknowledged that this act would cause an increase in local costs but only as to projects which involved a request for state financial support. Since such requests for state financial support were deemed “voluntary,” no additional local costs were mandated by the state so as to require the application of section 2164.3 of the Revenue and Taxation Code.

Sections 81836 and 81837 were applicable to community colleges before Assembly Bill No. 2398 was enacted but under the jurisdiction of the State Department of Education and numbered 15302 and 15409. The Legislative Counsel’s Digest states that Assembly Bill No. 2398 *transfers* the specified duties from the Department of Education to the Chancellor’s Office. The Legislature was adding some new duties to the *Chancellor’s Office* with respect to the standards applicable to construction plans and, further, it was not making *any change* as to an entirely locally funded construction project, the exact point at issue in this opinion.

Thus, the provisions of the Community College Construction Act of 1967 and the provisions of former section 15409 (now § 81836) were not viewed as coextensive. That is, some additional authority and responsibility was transferred to the Chancellor's Office from the Department of Education by the legislature. Thus, we conclude that the duties and responsibilities thereby transferred to the Chancellor's Office were not previously vested in it by the provisions of the Community College Construction Act of 1967.

It may be recalled that we quoted section 81836 at the start of this analysis and underscored the phrase "required to submit plans" that is contained in subdivision (c) of section 81836. It is apparent that the plans specified in section 81836 are not the plans specified in section 81820 *et seq.* The plans referred to in section 81836 are the building plans and specifications relating to the construction project. The plans referred to in section 81820 *et seq.* are the plans for future capital construction which are to be updated every five years and reported on every year to the Chancellor's Office. The "requirement" that "plans" be submitted, mentioned in section 81836, is the requirement imposed by section 81837, to wit, where the construction cost amounts to \$20,000 or more.

Thus, the basic statutory review function of the Chancellor's Office includes: (1) review of the "plan for capital construction," section 81822; (2) review of a proposed project for which state financial assistance is sought, sections 81805 and 81831; (3) review of "preliminary plans" for a project for which state financial support is sought, sections 81805, 81835, and 81836; and (4) review of "plans and specifications," irrespective of the source of funding, with respect to construction of facilities costing \$20,000 or more, sections 81836 and 81837.

As a pragmatic matter, the requirement of a five-year plan, with annual *reports* suggests there is no requirement of approval of *each* project as a condition precedent to *construction* of the project. By requiring annual reporting of entirely locally funded construction, the Legislature reasonably assures that the Chancellor has the required data so as adequately to evaluate any construction that requires state financial assistance. Thus, districts seeking state financial assistance for some projects must satisfy the Chancellor that a project is deserving of state financial support in the light of the district's overall needs. A district that elects to build a totally locally funded project may bear some risk that the construction of that project may adversely affect the Chancellor's decision with respect to a project needing state funds. However, the decision to build with local funds is that of the district, not that of the Chancellor, with the consequences of such a decision to be considered by the district as one of the factors pertinent to a decision to build some buildings only with local funds and to seek state assistance with respect to other construction. In any case, no basis appears from which to infer that the Legislature intended that the Chancellor have, in effect, a power to approve (and disapprove) all local decisions concerning the building needs of each district. We believe that such a policy judgment

should be reflected by express statutory language rather than by inference. We emphasize, however, that all such construction, costing \$20,000 or more, is subject to the standards adopted by the Chancellor in implementation of sections 81836 and 81837.

It is not our function to rewrite statutes in the guise of statutory interpretation. If there are problems arising from any lack of cohesion between these various statutes, the Legislature is the proper forum in which to change the statutes once the problems have been brought to its attention.

The language of these statutes is clear. We have now resolved the issue concerning the effect of their particular location in the Education Code. We conclude that the duties imposed upon the Chancellor's Office by section 81836 and the duties imposed upon the Board of Governors and the Chancellor's Office by sections 81800 through 81845 are different duties. The "standards" referred to in section 81821 are not the same "standards" referred to in section 81836. The former are to be adopted by the Board of Governors, the latter are to be adopted by the Chancellor. The standards" referred to in section 81805 are not necessarily the same "standards" referred to in section 81836. Although the Chancellor has the duty of "formulating" the former and of "establishing" the latter, these standards serve different legislative purposes and may or may not be the same standards. Whether they are or not, a construction project that does not require state funds is subject only to those standards implementing section 81836.

In summary, our conclusion with respect to the question presented is that the plans for construction of a community college school facility, which is subject to Education Code section 81837 but which is to be financed entirely by "local" funds, are subject to review and approval by the Chancellor only in accordance with such standards as he has established pursuant to Education Code section 81836. Plans for such an entirely locally funded construction project of a community college district are not subject to review or approval by the Chancellor as part of a "plan f or capital construction" that is required of each community college district by Education Code section 81820. Such a construction project is neither subject to the standards of the Board of Governors of the California Community Colleges adopted pursuant to Education Code section 81821 nor to any other provision of Education Code section 81821 except that the construction project must be included in the annual "building inventory" report to the Chancellor as required by Education Code section 81821, subdivision (e). Such a locally funded construction project is not subject to any cost standards or construction standards formulated by the Chancellor pursuant to Education Code section 81805.
