

AB 218

ANNUAL
REPORT
2020-2021

SELF

Schools Excess Liability Fund



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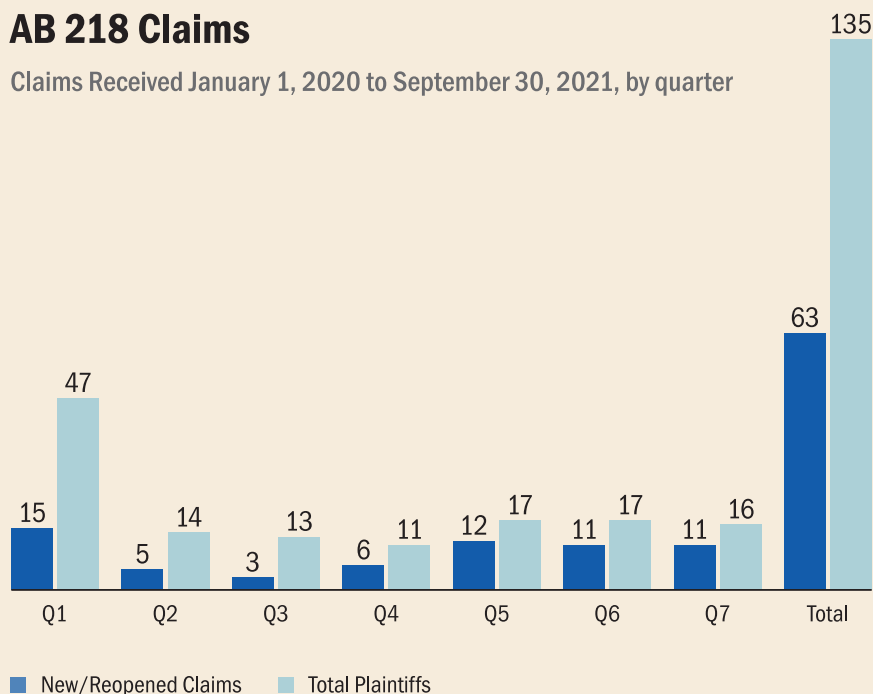
With the signing of The California Child Victims Act (AB 218) by the Governor in the fall of 2019, Schools Excess Liability Fund began to prepare for the immediate consequences to schools. While the legislature passed this bill and its author presented it as having no fiscal impact, SELF and others in the school risk pool community knew that it would have an immediate fiscal impact on school budgets statewide.

The new law imposed a significant unfunded mandate on public educational entities on both a prospective and retroactive basis. Going forward the costs of childhood sexual assault cases are increasing and on a retroactive basis, schools are now faced with defending claims going back as far as the 1970s with insufficient records and witnesses, and often little knowledge of where the district's insurance was placed at the time.

Over the last 35 years, SELF's membership has included nearly every school and community college district in the state. This has resulted in SELF having the largest exposure on behalf of California's schools due to its widespread membership. Our unique position required we take a leadership role statewide in developing a plan to address these new unfunded liabilities and become a vocal advocate for schools at the Capitol to keep legislators and

AB 218 Claims

Claims Received January 1, 2020 to September 30, 2021, by quarter



policy makers abreast of the fiscal impact this law has had on public schools. We have developed this annual report to keep you apprised of this evolving impact of AB 218.

AB 218 BACKGROUND

Authored by Assembly Member Lorena Gonzalez, D- San Diego, and enacted effective January 1, 2020, AB 218 has multiple implications for California's schools:

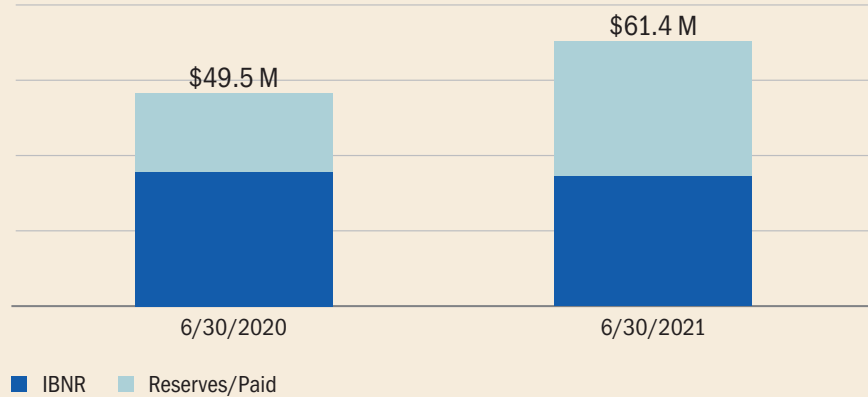
- It allows for a three year "revival period", effective January 1, 2020, with an unlimited statute of limitations for claims to be filed alleging improper sexual conduct against a minor from any time in the past, not just against the perpetrator, but against employers based on claims of negligent supervision or hiring.

- It broadens the type of misconduct it covers by changing the term "abuse" to "assault", significantly increasing the risk exposure of educational agencies.
- It provides for the recovery of treble damages, a cost typically excluded from commercial insurance policies and JPA memoranda of coverage, in cases where a "cover up" by the employer can be proven.
- It permanently extends the statute of limitations on child sexual assault claims to age 40 from age 26, and potentially even longer in repressed memory cases.
- It deletes entirely the requirement of filing a government claim.

The law exposes educational agencies to claims for child sexual assault going back decades and places them in the precarious position of having to defend against them.

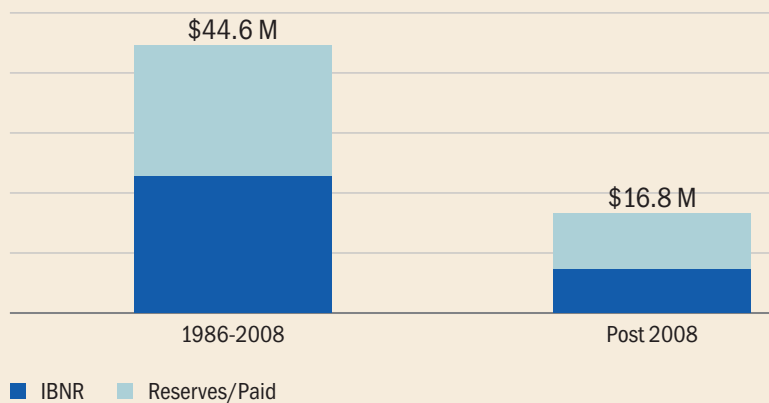
Actuarial Forecast

By Fiscal Year



Actuarial Forecast

Breakdown by year of loss



SELF'S AB 218 REVIVED LIABILITY FUNDING PLAN

SELF's Board knew that it had to begin development of a plan to address the anticipated costs coming with this new wave of liabilities that would impact our membership. Initial actuarial studies of the potential impact of AB 218 projected a conservative cost to California public schools of \$560M. Just six months into the revival window at June 2020, SELF's actuary had identified \$46.7 million of exposure in claims and actuarial liabilities to the SELF pool alone. This is the basis of the assessment districts received in 2021.

The Revived Liability Funding Plan was developed to provide a funding model that offered predictability for the membership and was sustainable over time. The assessment was based on an actuarial forecast and payable over three years.

The unprecedented nature of the retroactive liability exposure made the endeavor atypical of any assessment ever levied by a risk sharing joint powers authority. The Board was keenly aware of the budgetary challenges already facing California's schools and wanted to ensure that the solution developed for funding these new exposures was fair and equitable to all those impacted. Industry specialist actuaries, attorneys and accountants were enlisted in the effort to create a plan that met our goals of equity and transparency and was in keeping with the governing documents and history of SELF.

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WHAT'S NEXT

We are now nearly two years into the three-year revival period, which ends December 31, 2022. Member districts continue to receive claims and report those to SELF.

Until the revival period has closed, it is difficult to guess

what the future will hold. Additional funding to settle the claims presented by districts is inevitable. The SELF Board, comprised of your fellow school executives, is monitoring the claims and associated costs closely and will make an informed decision on funding. It is the Board's goal to communicate any decision to approve another funding call well in advance so that SELF members can appropriately plan and budget for additional AB 218 related costs.

While the prospect of another assessment is sobering, we did see some positive development on the legal front during the last year. When AB 218 was enacted, it amended current law to include treble damages against

entities that engaged in a "cover up". In two appellate legal opinions—one out of the Second Appellate District and one out of the Fourth Appellate District—the courts found the treble damages provision in the law to be primarily punitive and therefore barred against public entities. This decision is currently under review by the California Supreme Court.

Efforts are also underway to challenge the constitutionality of AB 218 itself.

At the State Capitol, SELF continues to meet with Department of Finance and Assembly and Senate legislative aides annually to keep them apprised of the financial impact that AB 218 has had on our public schools and colleges. The California Association of Joint Powers Authorities is also engaged in collaborative efforts with risk sharing pools across the state in an effort to educate legislators and policy makers.

SELF is committed to providing California schools protection from the financial devastation of these catastrophic claims. We will continue to provide annual report updates to our membership as the claims evolve.



Schools Excess Liability Fund

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