

**ITEM 5**  
**PROPOSED DECISION**

AND

**AMENDMENT TO PARAMETERS AND GUIDELINES**

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes 1986, Chapter 641

Statutes 1993, Chapters 1136, 1137 and 1138

As Modified by:

Proposition 30, General Election, November 6, 2012

*Open Meetings Act/Brown Act Reform*

CSM-4257/4469 (13-MR-02)

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## COMMISSION ON STATE MANDATES

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January 30, 2015

Mr. Tom Dyer  
Department of Finance (A-15)  
915 L Street  
Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Adopted Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**  
Mandate Redetermination, 13-MR-02  
Second Hearing: New Test Claim Decision  
*Open Meetings Act/Brown Act Reform (CSM-4257-4469)*  
Government Code Section 54952, et al.  
As Alleged to be Modified by Proposition 30, General Election, November 6, 2012  
California Department of Finance, Requester

Dear Mr. Dyer:

On January 23, 2015, the Commission on State Mandates (Commission) adopted a new test claim decision that supersedes the previously adopted test claim decision on the above-entitled matter. The adopted decision is enclosed. The draft expedited amendment to parameters and guidelines is also enclosed for your review and comment.

**Written Comments on Draft Expedited Amendment to Parameters and Guidelines**

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the March Commission hearing.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **February 20, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

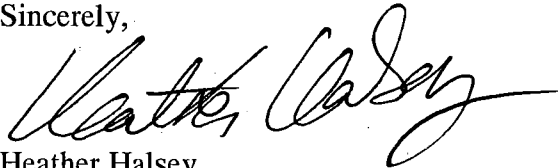
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Mr. Tom Dyer  
January 30, 2015  
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**Hearing**

The amendment to the parameters and guidelines is set for hearing on **March 27, 2015**. The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about March 13, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:  
SECOND HEARING: NEW TEST CLAIM  
DECISION FOR:

Government Code Sections 54952, 54954.2,  
54954.3, 54957.1, 54957.7;

Statutes 1986, Chapter 641; Statutes  
1993, Chapters 1136; 1137; 1138

As Alleged to be Modified by:

Proposition 30, General Election,  
November 6, 2012

Filed on July 29, 2013

By the Department of Finance, Requester.

Case No.: 13-MR-02

*Open Meetings Act/Brown Act  
Reform (CSM-4257/4469)*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500,  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted January 23, 2015)*

*(Served January 30, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 23, 2015. Donna Ferebee and Lee Scott appeared on behalf of the Department of Finance.

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission adopted the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of seven to zero.

**SUMMARY OF THE FINDINGS**

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the CSM-4257/4469 mandates has been modified based on a subsequent change in law. Specifically, article XIII, section 36 of the California Constitution, enacted by Proposition 30, which was adopted by the voters on November 6, 2012, expressly declared that activities under Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code (commencing with section 54950) "shall not be a reimbursable mandate" under article XIII

B, section 6. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *Open Meetings Act/Brown Act Reform* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution, effective November 7, 2012.<sup>1</sup>

## COMMISSION FINDINGS

### I. Chronology

- 3/23/1988 The Commission adopted the statement of decision for the Open Meetings Act test claim (CSM-4257).<sup>2</sup>
- 6/28/2001 The Commission adopted the statement of decision for the Brown Act Reform test claim (CSM-4469).<sup>3</sup>
- 4/25/2002 The Commission adopted consolidated parameters and guidelines for Open Meetings Act/Brown Act Reform (CSM-4257/4469).<sup>4</sup>
- 7/19/2005 The Legislature enacted Statutes 2005, chapter 72 (AB 138), which required the Commission to set aside the test claim decisions and parameters and guidelines in CSM-4257 and CSM-4469.
- 9/27/2005 The Commission set aside CSM-4257 and CSM-4469, effective 7/19/2005.<sup>5</sup>
- 3/9/2009 The Third District Court of Appeal held that AB 138 violated separation of powers principles, and ordered the Commission to reinstate the prior decisions in CSM-4257 and CSM-4469.<sup>6</sup>
- 9/25/2009 The Commission reinstated CSM-4257 and CSM-4469, test claim decisions and parameters and guidelines, pursuant to *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, effective July 31, 2009.<sup>7</sup>

<sup>1</sup> California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

<sup>2</sup> Exhibit B, Test Claim Statement of Decision CSM-4257.

<sup>3</sup> Exhibit C, Test Claim Statement of Decision CSM-4469.

<sup>4</sup> Exhibit D, Parameters and Guidelines.

<sup>5</sup> Exhibit D, Parameters and Guidelines.

<sup>6</sup> *California School Boards Association v. State* (2009) 171 Cal.App.4th 1183, at pp. 1198-1218.

<sup>7</sup> Exhibit D, Parameters and Guidelines.

- 11/6/2012 The voters adopted Proposition 30, which added article XIII, section 36 to the California Constitution.<sup>8</sup>
- 7/29/2013 The Department of Finance (Finance) filed a request for redetermination on CSM-4257 and CSM-4469.<sup>9</sup>
- 9/9/2013 The Controller submitted comments on the redetermination request.<sup>10</sup>
- 9/5/2014 Commission staff issued the draft decision for the first hearing.<sup>11</sup>
- 9/26/2014 The Controller submitted written comments on the draft.<sup>12</sup>
- 12/05/2014 The Commission adopted the decision on the first hearing, finding that Finance made an adequate showing and directed staff to prepare the draft proposed decision for the second hearing.
- 12/05/2014 Commission staff issued the adopted decision for the first hearing and the draft proposed decision for the second hearing.<sup>13</sup>
- 12/22/2014 The Controller filed comments on the draft proposed decision for the second hearing.<sup>14</sup>

## **II. Background**

### **A. The Open Meetings Act, the Brown Act, and the Alleged Subsequent Change in Law**

Statutes 1986, chapter 641 added section 54954.2 to the Government Code, which requires a local agency to post an agenda 72 hours before a regular meeting, describing the items to be discussed at the meeting and specifying the time and place of the meeting. Statutes 1986, chapter 641 also added section 54954.3, which generally requires all regular meetings to provide an opportunity for public comment. The Commission found this statute imposed costs mandated by the state, in CSM-4257.<sup>15</sup>

Statutes 1993, chapters 1136, 1137, and 1138 added or amended sections 54952, 54954.2, 54957.1, and 54957.7 to the Government Code. The Commission found that this test claim statute enlarged the definition of “legislative bodies” subject to the requirements of section

<sup>8</sup> Exhibit K, Text of Ballot Measure, Proposition 30.

<sup>9</sup> Exhibit A, Request for Redetermination.

<sup>10</sup> Exhibit E, Controller’s Comments on the Request for Redetermination.

<sup>11</sup> Exhibit F, Draft Proposed Decision, First Hearing.

<sup>12</sup> Exhibit G, Controller’s Comments on the Draft Proposed Decision, First Hearing.

<sup>13</sup> Exhibit H, Adopted Decision, First Hearing; Exhibit I, Draft Proposed Decision, Second Hearing.

<sup>14</sup> Exhibit J, Controller’s Comments on Draft Proposed Decision, Second Hearing.

<sup>15</sup> See Exhibit B, Test Claim Statement of Decision CSM-4257.

54952.2; required closed session items to be listed on a meeting agenda; required the reporting of closed session items after closed session and the provision of closed session documents; and required the disclosure of certain closed session items prior to and after the closed session.<sup>16</sup>

In the parameters and guidelines for the two test claims, the reimbursable activities are described as follows:

A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting. (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.

<sup>16</sup> See Exhibit C, Test Claim Statement of Decision CSM-4469.

- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
  - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
  - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
  - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a



person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)

4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of Brown Act Reform. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).<sup>17</sup>

Article XIII, section 36 of the California Constitution, enacted by Proposition 30, which was adopted by the voters on November 6, 2012, expressly disclaims the existence of any reimbursable state mandate arising from Government Code 54950 et seq. Specifically, Proposition 30 provides that “[a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code,

<sup>17</sup> Exhibit D, Parameters and Guidelines.

with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.”<sup>18</sup>

#### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.”<sup>19</sup>

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>20</sup>

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”<sup>21</sup>

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”<sup>22</sup> If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”<sup>23</sup>

<sup>18</sup> Exhibit K, Text of Proposed Laws, November 6, 2012 General Election, page 2.

<sup>19</sup> Code of Regulations, Title 2, section 1190.05(a)(1).

<sup>20</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>21</sup> California Code of Regulations, Title 2, section 1190.05(a)(5)(B).

<sup>22</sup> Code of Regulations, Title 2, section 1190.05(b)(1).

<sup>23</sup> Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856)).

### **III. Positions of the Requester, Test Claimant, and Interested Parties and Persons**

#### **A. Department of Finance, Requester**

Finance argues that “[b]y adding Article XIII, Section 36, subdivision (c)(3) to the Constitution, the electorate stated the reimbursable requirements of the Open Meetings Act and Brown Act Reform mandates are no longer reimbursable mandates.”<sup>24</sup>

#### **B. Controller’s Position**

The Controller states that it “concur[s] that Proposition 30 is the subsequent change in law that eliminated reimbursement of state mandated costs” for the Open Meetings Act and Brown Act Reform test claims.<sup>25</sup> The Controller stated that it has no comments on the draft proposed decision for the second hearing.<sup>26</sup>

### **IV. Discussion**

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>27</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>28</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>29</sup>

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a

<sup>24</sup> Exhibit A, Request for Redetermination, 13-MR-02, page 8.

<sup>25</sup> Exhibit E, Controller’s Comments, page 1.

<sup>26</sup> Exhibit J, Controller’s Comments on Draft Proposed Decision, Second Hearing, page 1.

<sup>27</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

<sup>28</sup> *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

<sup>29</sup> *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.<sup>30</sup>

**A. Proposition 30 Constitutes a Subsequent Change in Law, as Defined.**

Government Code section 17570 provides that a test claim decision may be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has altered the state's liability for reimbursement. A subsequent change in law is defined in section 17570 as “[a] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law...”<sup>31</sup> Under this definition, then, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) another change in mandates law.

This request for redetermination does not allege a subsequent change in law that requires a finding of a new cost mandated by the state pursuant to section 17514, or a finding that a cost is not mandated by the state pursuant to section 17556. Rather, the request is based on the plain language exception to reimbursement adopted in Proposition 30 and, thus, is alleged as another change in mandates law. Proposition 30, adopted by the voters November 6, 2012, provides, in pertinent part:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.<sup>32</sup>

The test claim statements of decision and parameters and guidelines for CSM-4257 and CSM-4469 found reimbursable activities imposed by Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. Chapter 9, Part 1, Division 2 of title 5 of the Government Code includes sections 54950 through 54963. Therefore, all code sections found to impose activities in test claims CSM-4257 and CSM-4469 are within Chapter 9, and pursuant to Proposition 30, “shall not be a reimbursable mandate...”

Additionally, while amended article XIII, section 36 provides for an exemption from subvention for “a local agency” required to comply with Chapter 9, the chapter itself interprets “local agency” broadly to include school districts. Government Code sections 17518 and 17519, normally controlling in the Commission's analyses, define “local agency” and “school district” separately. And generally, when the Commission identifies both local agencies and school districts together, for purposes of a mandate finding, the preferred usage is “local government.”

<sup>30</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>31</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>32</sup> Exhibit K, Text of Proposed Laws, November 6, 2012 General Election, page 2.

However, Government Code 54951, contained within chapter 9, part 1, Division 2 of title 5 of the Government Code, which Proposition 30 purports to modify, provides that “[a]s used in this chapter, local agency means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.” Therefore, section 54951 defines “local agency” more broadly than is usually meant in the Commission’s processes, and article XIII, section 36, as added by Proposition 30, must be interpreted to apply the same definition.

Article XIII, section 36 of the California Constitution as enacted by Proposition 30 effects “a change in mandates law,” in that it directly invokes article XIII B, section 6, and states that a certain chapter of the Government Code, which contains the mandate previously approved by the Commission, cannot impose a reimbursable mandate under section 6. Since Proposition 30 was codified as article XIII, section 36 of the California Constitution, it is on equal footing with article XIII B, section 6, and, being later-enacted, is presumed to take precedence.<sup>33</sup> In addition, a more specific provision controls over a more general provision. Therefore, to the extent that article XIII, section 36 conflicts with article XIII B, section 6, the former should be treated as an exception to the latter.<sup>34</sup> The Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.<sup>35</sup>

Based on the foregoing, the Commission found at the first hearing on this redetermination that Proposition 30, adding article XIII, section 36 to the California Constitution, constitutes a subsequent change in law, as defined.<sup>36</sup>

**B. Proposition 30 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.**

Article XIII, section 36 of the California Constitution, added by Proposition 30, adopted November 6, 2012, provides, in pertinent part:

Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services

<sup>33</sup> *People v. Moody* (Cal. Ct. App. 3d Dist. 2002) 96 Cal.App.4th 987.

<sup>34</sup> *People v. Superior Court* (2002) 28 Cal.4th 798, at p. 809.

<sup>35</sup> California Constitution, article III, section 3.5.

<sup>36</sup> See Exhibit H, First Hearing Decision, page 8.

responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.<sup>37</sup>

As shown above, the Commission has previously found reimbursable state-mandated activities under Government Code sections 54952, 54954.2, 54957.7, and 54957.1.<sup>38</sup> These sections of the Government Code are found within Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, which includes sections 54950 through and include 54963. Therefore, the plain language of article XIII, section 36 directly implicates these sections of the Government Code.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.<sup>39</sup> Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 54950-54963.

The California Constitution states that “[a]ll political power is inherent in the people,” and that “[g]overnment is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.”<sup>40</sup> The California Supreme Court has recognized the supremacy of the electorate as follows: “[t]he people of this state, as the ultimate source of legitimate political power, are of course free through constitutional amendment to adopt whatever changes in the existing system they consider appropriate, subject only to limitations contained in the Constitution of the United States.”<sup>41</sup> And the United States Supreme Court has held that the only limitation on the power of a state to alter its constitution is that the government of the state “must be of the Republican form.”<sup>42</sup>

Both articles XIII B, section 6 and XIII, section 36 “have equal dignity, as constituents of the state Constitution.”<sup>43</sup> The two provisions therefore should be interpreted in a manner that would harmonize their effects, if possible.<sup>44</sup> If it is not possible to reconcile two potentially conflicting provisions, “special provisions control more general provisions, and the general and special

<sup>37</sup> California Constitution, article XIII, section 36 (added, Proposition 30, November 6, 2012).

<sup>38</sup> See Exhibit D, Parameters and Guidelines.

<sup>39</sup> California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

<sup>40</sup> California Constitution, article II, section 1.

<sup>41</sup> *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, at p. 680.

<sup>42</sup> *Chisholm v. Georgia* (1793) 2U.S. 419, at p. 448.

<sup>43</sup> *Miller v. Superior Court* (1999) 21 Cal.4th 883, at p. 892.

<sup>44</sup> *Ibid.*

provisions operate together, neither working the repeal of the other.<sup>45</sup> In addition, “where two constitutional provisions conflict, the one that was enacted later in time controls.”<sup>46</sup>

Therefore, article XIII, section 36, enacted by Proposition 30, to the extent that it provides an exception to the reimbursement requirement of article XIII B, section 6, is presumptively controlling. The two provisions cannot be harmonized, because section 36 creates an express exception for “[a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code...” from the operation of article XIII B, section 6, as that provision has previously been interpreted by the Commission, and as certain sections of chapter 9 have been previously found to impose a reimbursable state mandate.<sup>47</sup> However, section 36 is both later-enacted, and more specific, than article XIII B, section 6; it provides an exception from the subvention requirement pertaining only to a single chapter of the Government Code. Therefore, the general and special provisions can operate together “neither working the repeal of the other,”<sup>48</sup> and section 36 is presumed to create a valid exception to the reimbursement requirement of article XIII B, section 6.

Based on the foregoing, the Commission finds that the state’s liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.

**C. The Open Meetings Act/Brown Act Reform Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning November 7, 2012.**

Government Code section 17570 provides that a redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.”<sup>49</sup> This redetermination request was filed on July 29, 2013, establishing potential eligibility beginning July 1, 2012. However, the subsequent change in law identified was adopted on November 6, 2012, and became effective the following day.<sup>50</sup> Therefore, the Open Meetings Act/Brown Act Reform program no longer constitutes a reimbursable state-mandated program beginning November 7, 2012.

**V. CONCLUSION**

Based on the foregoing, the Commission approves the request for redetermination and concludes that the Open Meetings Act/Brown Act Reform program does not constitute a reimbursable

<sup>45</sup> *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

<sup>46</sup> *Crawford v. Huntington Beach Union High School District* (2002) 98 Cal.App.4th 1275, at p. 1286.

<sup>47</sup> See Exhibits A, B, C, Test Claims and Parameters and Guidelines.

<sup>48</sup> *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

<sup>49</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>50</sup> California Constitution, article II, section 10.

state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution and, beginning November 7, 2012.



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 30, 2015, I served the:

**Adopted Decision, Draft Expedited Amendment to Parameters and Guidelines,  
and Notice of Hearing**

Mandate Redetermination Request, 13-MR-02

*Open Meetings Act/Brown Act Reform (CSM-4257/4469)*

Government Code Sections 54952, et al.

California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 30, 2015 at Sacramento, California.



---

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**Claim Number:** 13-MR-02

**Matter:** Open Meetings Act/Brown Act Reform (CSM-4257/4469)

**Requester:** Department of Finance

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January 30, 2015

Mr. Tom Dyer  
 Department of Finance (A-15)  
 915 L Street  
 Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Adopted Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**  
 Mandate Redetermination, 13-MR-02  
 Second Hearing: New Test Claim Decision  
*Open Meetings Act/Brown Act Reform (CSM-4257-4469)*  
 Government Code Section 54952, et al.  
 As Alleged to be Modified by Proposition 30, General Election, November 6, 2012  
 California Department of Finance, Requester

Dear Mr. Dyer:

On January 23, 2015, the Commission on State Mandates (Commission) adopted a new test claim decision that supersedes the previously adopted test claim decision on the above-entitled matter. The adopted decision is enclosed. The draft expedited amendment to parameters and guidelines is also enclosed for your review and comment.

**Written Comments on Draft Expedited Amendment to Parameters and Guidelines**

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the March Commission hearing.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **February 20, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Rebuttals. Written rebuttals may be submitted within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.8(f).)

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

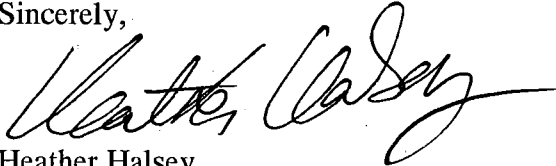
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Mr. Tom Dyer  
January 30, 2015  
Page 2

**Hearing**

The amendment to the parameters and guidelines is set for hearing on **March 27, 2015**. The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about March 13, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey  
Executive Director

Amended: March 27, 2015

Reinstated: July 31, 2009

Set Aside: July 19, 2005

Consolidated and Adopted: April 25, 2002

Adopted: 12/4/1991

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Item \_\_\_\_\_

## **Draft Expedited Amendment to Parameters and Guidelines**

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7

Statutes of 1986, Chapter 641

Statutes of 1993, Chapters 1136, 1137 and 1138

As Modified by:

Proposition 30, General Election, November 6, 2012

*Open Meetings Act/Brown Act Reform*

CSM 4257/4469 (13-MR-02)

### **Reimbursement for this Program Ends Beginning November 7, 2012**

#### **I. SUMMARY OF THE MANDATE**

Government Code sections 54952, 54954.2, 54957.1 and 54957.7 require that “legislative bodies” of local agencies comply with certain changes to the Ralph M. Brown Act, also known as the Open Meetings Act.

On June 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision on the *Brown Act Reform* test claim (CSM-4469). The Commission found that Government Code sections 54952, 54954.2, 54957.1, and 54957.7, as added and amended by Statutes of 1993, chapters 1136, 1137, and 1138, constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim legislation expanded the types of “legislative bodies” required to comply with the notice and agenda requirements of Government Code sections 54954.2 and 54954.3, to include:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).



It also required all “legislative bodies” to perform a number of additional activities in relation to the closed session requirements of the Brown Act, as follows:

- To include a brief general description on the agenda of all items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. (Gov. Code, § 54954.2, subd. (a).)
- To disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
- To reconvene in open session prior to adjournment and report the actions and votes taken in closed session for the five items identified in Government Code section 54957.1, subdivision (a)(1-4, 6). (Gov. Code, § 54957.7, subd. (b).)
- To provide copies of closed session documents as required. (Gov. Code, § 54957.1, subd. (b) and (c).)

~~The Commission previously adopted two test claims on the Brown Act:~~

#### ~~1. Open Meetings Act~~

~~On March 23, 1988, the Commission adopted the *Open Meetings Act* test claim (CSM-4257). Statutes of 1986, chapter 641, added Government Code section 54954.2 to require that the legislative body of the local agency, or its designee, post an agenda containing a brief general description of each item of business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting and requiring that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. The following types of “legislative bodies” were eligible for reimbursement:~~

- ~~Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.~~
- ~~Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.~~
- ~~Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.~~

~~Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.~~

#### ~~2. School Site Councils and Brown Act Reform~~

~~On April 27, 2000, the Commission approved the *School Site Councils and Brown Act Reform* test claim (CSM-4501). This test claim was based on Government Code section 54954 and Education Code section 35147, which addressed the application of the open meeting act~~

~~provisions of the Brown Act to specified school site councils and advisory committees of school districts.<sup>1</sup>~~

On April 25, 2002 the Commission adopted parameters and guidelines for *Open Meetings Act/Brown Act Reform*. Those parameters and guidelines provide for reimbursement of activities required by Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7, as those sections are added or amended by Statutes 1986, chapter 641; and Statutes 1993, chapter 1136, 1137, and 1138.

On November 6, 2012 the voters approved Proposition 30, also known as “The Schools and Local Public Safety Protection Act of 2012.”<sup>2</sup> Among other changes, Proposition 30 added article XIII, section 36 to the California Constitution, which expressly stated that:

Notwithstanding Section 6 of Article XIII B, or any other constitutional provision... [a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

On July 29, 2013, the Department of Finance (Finance) filed a request for redetermination of the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469) test claims.

On January 23, 2015, the Commission approved Finance’s request for redetermination, and found that Proposition 30 constitutes a subsequent change in law that eliminates the state’s liability for reimbursement under the previously adopted test claim decisions, CSM 4257 and 4469, as of the effective date of the ballot measure.

## **II. ELIGIBLE CLAIMANTS**

Any county, city, a city and county, school or special district that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17570(f) provides that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.” The request for redetermination, 13-MR-02, was filed on July 29, 2013, establishing eligibility for loss of reimbursement as of July 1, 2011. However, the subsequent change in law alleged, Proposition 30, was approved by the voters on November 6, 2012, and became effective on November 7,

<sup>1</sup> The parameters and guidelines for the *School Site Councils and Brown Act Reform* test claim are not included in these parameters and guidelines because those parameters and guidelines were set aside pursuant to court order (*Department of Finance v. Commission* (2003) 30 Cal.4th 727, at p. 754.)

<sup>2</sup> Exhibit X, Text of Proposition 30, at p. 2.

2012. Therefore, reimbursement for the test claim activities is ended beginning November 7, 2012.

Government Code section 17557, prior to its amendment by Statutes of 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for *Brown Act Reform* was filed on December 29, 1994. Statutes of 1993, chapters 1136, 1137, and 1138, became effective January 1, 1994. Therefore, costs incurred on or after January 1, 1994 for compliance with the *Brown Act Reform* mandate are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

Initial years' costs shall not include any costs that were claimable or reimbursed pursuant to *Open Meetings Act* Parameters and Guidelines as amended on December 4, 1991 or November 30, 2000. Reimbursement for these costs must be claimed as prescribed in the Controller's Claiming Instructions No. 2000-15 and 2000-16 for local agencies and schools, respectively.

Annual claims, commencing with the 2001-2002 fiscal year, shall include all costs for *Open Meetings Act* and *Brown Act Reform*.

#### **IV. REIMBURSABLE ACTIVITIES**

For each eligible claimant, the following activities are eligible for reimbursement:

##### **A. Agenda Preparation and Posting Activities**

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting.<sup>3</sup> (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

<sup>3</sup> As amended by Statutes of 1993, chapter 1136.

Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

#### B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
  - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as

- the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
- c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
  - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
  4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of *Brown Act Reform*. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other *permanent* boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.

- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

## V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in section IV of this document.

### A. Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items

Eligible claimants may use the actual time, standard time, or flat rate reimbursement options for claiming costs incurred pursuant to section IV.A of these parameters and guidelines for agenda preparation and posting, including closed session items.<sup>4</sup> Eligible claimants must claim actual costs incurred for subsequent reporting of action taken in closed session, providing copies of documents approved or adopted in closed session, and training.

For each type or name of meeting claimed during a fiscal year, select one of the following reimbursement options. For example, all city council meetings in a given fiscal year may be claimed on only one basis: actual time, standard time or flat-rate. If standard time is selected, all city council meetings must be claimed using this basis for the entire year. However, all city council meetings could be claimed on an actual cost basis during a subsequent fiscal year.

#### 1. Actual Time

List the meeting names and dates. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Counties and cities may claim indirect costs pursuant to section V.C.

#### 2. Standard Time

##### a. Main Legislative Body Meetings of Counties and Cities

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as “adjournment”, “call to order”, “flag salute”, and “public comments”, by 30 minutes and then by the blended productive hourly rate of the involved employees.

<sup>4</sup> The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

Counties and cities may claim indirect costs pursuant to section V.C.

b. Special District Meetings, and County and City Meetings Other Than Main Legislative Body

List the meeting names and dates. For each meeting, multiply the number of agenda items, excluding standard agenda items such as “adjournment”, “call to order”, “flag salute”, and “public comments”, by 20 minutes and then by the blended productive hourly rate of the involved employees.

Special districts, counties and cities may claim indirect costs pursuant to section V.C.

c. School and Community College Districts and County Offices of Education

List the meeting names and dates. For each meeting, multiply the number of agenda items times the minutes per agenda item for County Offices of Education and for districts, by enrollment size, times the blended productive hourly rate of the involved employees. The minutes per agenda for County Offices of Education and for districts by enrollment size are:

County Offices of Education:	45 minutes
Districts:	
Enrollment 20,000 or more	45 minutes
Enrollment 10,000 – 19,999	15 minutes
Enrollment less than 10,000	10 minutes

School and community college districts and County Offices of Education may claim indirect costs pursuant to section V.C.

3. Flat Rate<sup>5</sup>

List the meeting names and dates. Multiply the uniform cost allowance, shown in the table provided below, by the number of meetings. The uniform cost allowance shall be adjusted each year subsequent to fiscal year 1997-1998 by the Implicit Price Deflator referenced in Government Code section 17523.

1993-1994	\$ 90.10
1994-1995	92.44
1995-1996	95.12
1996-1997	97.31
1997-1998	100.00

<sup>5</sup> The flat rate includes all of the costs for preparing and posting an agenda, including closed session agenda items. Claimants that filed reimbursement claims under the *Open Meetings Act* Program using the flat rate reimbursement option cannot file another reimbursement claim using the flat rate option for initial years costs for agenda preparation of closed session items under Brown Act Reform. Refer to sections III and IV of these parameters and guidelines.

## B. Direct Cost Reporting

Direct costs that are eligible for reimbursement are:

### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element B.1, Salaries and Benefits, for each applicable reimbursable activity.

### 6. Training

Report the cost of training members of the legislative body to perform the reimbursable activities, as specified in section IV.B of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training



necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1, Salaries and Benefits, and B.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in section VI.

### C. Indirect Cost Rates

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department of program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

#### Cities, Counties and Special Districts

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into

groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

#### School Districts

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

#### County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

#### Community Colleges

Community colleges have the option of using (1) a federally approved rate, using the cost accounting principles from the OMB Circular A-21 "Cost Principles of Educational Institutions", (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

### **VI. SUPPORTING DATA**

#### **A. Source Documents**

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence. For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.

The blended productive hourly rate, used in claiming standard or unit time reimbursements, may be calculated by determining the percentage of time spent by persons or classifications of persons on the reimbursable activities and multiplying the productive hourly rate (including salaries, benefits and indirect costs, if not claimed elsewhere) for each person or classification of persons times the percentage of time spent by that person or classification of persons. Claimants may determine a percentage allocation for the person or classification of persons in a base fiscal year and use that percentage allocation for subsequent future years by multiplying the base year percentages times the productive hourly rate for that person or classification of persons for the fiscal year of the reimbursement claim.

For example, a city manager may determine that the percentage of time spent on the reimbursable activities by various classifications in a base year of fiscal year 1998-1999 was as follows:

City Manager	17%
City Attorney	15%
City Clerk	36%
Department Managers	9%
Secretaries	23%
Total	100%

The city determines that the productive hourly rate (salaries, benefits, and indirect costs) for fiscal year 2000-2001 for each classification is as follows:

	Salary	Benefits	Indirect Cost Rate	Indirect Costs	Productive Hourly Rate
City Manager	\$60	\$12	29%	\$13	\$85
City Attorney	\$55	\$10	30%	\$15	\$80
City Clerk	\$40	\$ 8	31%	\$12	\$60
Department Manager	\$45	\$ 9	30%	\$11	\$65
Secretaries	\$18	\$ 5	25%	\$ 7	\$30

The blended productive hourly rate for fiscal year 2000-2001 is determined by multiplying the percentages in the base year times the productive hourly rate in the fiscal year claimed, and adding the totals, as follows:

City Manager	17%	\$85	\$14.25
City Attorney	15%	\$80	\$12.00
City Clerk	36%	\$60	\$21.60
Department Manager	9%	\$65	\$ 5.85
Secretaries	23%	\$30	\$ 6.90
Total	100%		\$60.80

The city's claim would be determined by multiplying the blended productive hourly rate times the minutes per agenda item times the number of agenda items.

#### B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

### VII. **OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed.

In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

#### **VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION**

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

#### **IX. PARAMETERS AND GUIDELINES AMENDMENTS**

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 30, 2015, I served the:

**Adopted Decision, Draft Expedited Amendment to Parameters and Guidelines,  
and Notice of Hearing**

Mandate Redetermination Request, 13-MR-02

*Open Meetings Act/Brown Act Reform (CSM-4257/4469)*

Government Code Sections 54952, et al.

California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 30, 2015 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/26/15

**Claim Number:** 13-MR-02

**Matter:** Open Meetings Act/Brown Act Reform (CSM-4257/4469)

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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RECEIVED  
February 13, 2015  
Commission on  
State Mandates

**BETTY T. YEE**  
California State Controller  
Division of Accounting and Reporting

February 13, 2015

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Adopted Decision, Draft Expedited Amendment to Parameters and Guidelines,  
and Notice of Hearing  
Mandate Redetermination, 13-MR-02  
Second Hearing: New Test Claim Decision  
Open Meetings Act/Brown Act Reform (CSM-4257-4469)  
Government Code Section 54952, et al.  
As alleged to be Modified by Proposition 30, General Election, November 6, 2012  
California Department of Finance, Requester

Dear Ms. Halsey:

We have reviewed the draft expedited amendment to the parameters and guidelines submitted by the Commission staff. Below are our comments and recommendations. Proposed additions are underlined and deletions are indicated with strikethrough as follows:

**III. PERIOD OF REIMBURSEMENT**

Page 4

Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs for the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims....

**COMMENT:** Estimated costs are no longer acceptable. Please add (A) on the citation's subdivision for consistency.

Page 4, fourth paragraph

If total costs for a given fiscal year do not exceed ~~\$200~~ \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, subdivision (a).

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

**COMMENT:** Pursuant to GC section 17564, subdivision (a), the current threshold is \$1,000. Please add the relevant verbiage related to suspended mandates because the Open Meetings Act/Brown Act Reform program for local agencies is suspended for fiscal year 2012-13.

### **C. Indirect Cost Rates**

Page 11

#### **School Districts**

School districts must use the ~~J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education~~ CDE approved indirect cost rate for the year that funds are expended.

#### **County Offices of Education**

~~County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

**COMMENT:** Please use the current indirect cost rate guideline for school districts. This is relevant because the school districts can still file claims for costs incurred from July 1, 2012 through November 6, 2012. County Offices of Education are already included in the definition of a school district, per GC section 17519.

## **IX. PARAMETERS AND GUIDELINES AMENDMENTS**

Page 13

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.217.

**COMMENT:** Please use the updated number of the citation, effective July 1, 2014, for consistency.

Ms. Heather Halsey  
February 13, 2015  
Page 3

Should you have any questions regarding the above, please contact Eduardo Antonio at (916) 323-0755 or email [eantonio@sco.ca.gov](mailto:eantonio@sco.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'JAL', with a long horizontal flourish extending to the right.

JAY LAL, Manager  
Local Reimbursements Section

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 13, 2015, I served the:

**SCO Comments**

Mandate Redetermination Request, 13-MR-02

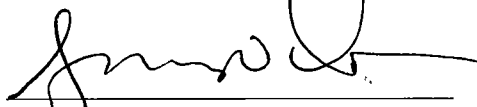
*Open Meetings Act/Brown Act Reform (CSM-4257/4469)*

Government Code Sections 54952, et al.

California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 13, 2015 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/12/15

**Claim Number:** 13-MR-02

**Matter:** Open Meetings Act/Brown Act Reform (CSM-4257/4469)

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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February 19, 2015

Mr. Jay Lal  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 700  
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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Request for Comment**

*Open Meetings Act/Brown Act Reform*, CSM-4257-4469 (13-MR-02)  
Government Code Section 54952, et al.  
As Modified by Proposition 30, General Election, November 6, 2012  
California Department of Finance, Requester

Dear Mr. Lal:

On January 23, 2015, the Commission on State Mandates (Commission) adopted a new test claim decision, ending reimbursement for the *Open Meetings Act/Brown Act Reform* program, pursuant to a redetermination request filed by the Department of Finance. Government Code section 17570 now requires the Commission to amend the parameters and guidelines for the program to conform to its new test claim decision, which determined that reimbursement for the program ended as of November 7, 2012. Accordingly, Commission staff issued draft expedited amended parameters and guidelines on January 30, 2015.

On February 13, 2015, the State Controller's Office (Controller) submitted written comments on the draft expedited amended parameters and guidelines, proposing several changes varying in scope. The Controller's comments state that these changes are "relevant because the school districts can still file claims for costs incurred from July 1, 2012 through November 6, 2012."

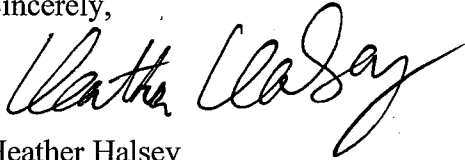
Government Code section 17560 provides that annual claims may be filed by February 15 following the fiscal year in which costs are incurred. Section 17561(d)(3) provides for the Controller to withhold 10 percent of the allowable amount of a claim filed late, but also states that in no case may a claim be paid if submitted more than one year after the filing deadline. Here, the Commission determined in the new test claim decision that reimbursement for the program ended as of November 7, 2012, approximately four months into the 2012-2013 fiscal year. Timely claims for that four month period of the 2012-2013 fiscal year, in accordance with section 17560, were required to be filed by February 15, 2014. Late claims, in turn, were required to be filed by February 15, 2015, in accordance with section 17561. Now that both dates have passed, it appears that any remaining claims under the *Open Meetings Act/Brown Act Reform* mandate are foreclosed.

Based on the foregoing and in light of the Controller's comments stating that school districts are still able to file for costs incurred between July 1, 2012 and November 6, 2012, Commission staff asks for additional comment and clarification as to why the proposed changes are necessary.

Mr. Jay Lal  
February 19, 2015  
Page 2

Please respond no later than **February 26, 2015**, so that we may keep this item on the agenda for the March Commission meeting. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey  
Executive Director

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 19, 2015, I served the:

**Request for Comment**

*Open Meetings Act/Brown Act Reform*, CSM-4257-4469 (13-MR-02)

Government Code Section 54952, et al.

As Modified by Proposition 30, General Election, November 6, 2012

California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 19, 2015 at Sacramento, California.



---

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/12/15

**Claim Number:** CSM-4257/4469 (13-MR-02)

**Matter:** Open Meetings Act/Brown Reform Act

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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RECEIVED  
February 24, 2015  
Commission on  
State Mandates

**BETTY T. YEE**  
California State Controller  
Division of Accounting and Reporting

February 24, 2015

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Request for Comment  
Open Meetings Act/Brown Act Reform (CSM-4257-4469) (13-MR-02)  
Government Code Section 54952, et al.  
As Modified by Proposition 30, General Election, November 6, 2012  
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office (SCO) submitted its comment on February 13, 2015. At that time, claimants could still file late or amended claims by February 15, 2015.

SCO concurs with the Commission on State Mandates that any new claims filed from February 16, 2015 and forward, under the Open Meetings Act/Brown Act Reform are no longer acceptable pursuant to Government Code section 17561(d)(3) and none of our proposed changes are necessary.

Should you have any questions regarding the above, please feel free to contact me at (916) 324-0256, or email [jlal@sco.ca.gov](mailto:jlal@sco.ca.gov).

Sincerely,

JAY LAL, Manager  
Local Reimbursements Section

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

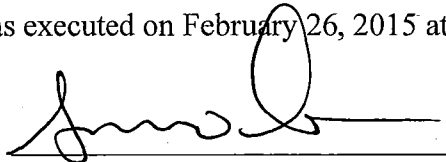
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 26, 2015, I served the:

**SCO Response to Commission Request for Comment**  
Mandate Redetermination Request, 13-MR-02  
*Open Meetings Act/Brown Act Reform (CSM-4257/4469)*  
Government Code Sections 54952, et al.  
California Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 26, 2015 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/23/15

**Claim Number:** 13-MR-02

**Matter:** Open Meetings Act/Brown Act Reform (CSM-4257/4469)

**Requester:** Department of Finance

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Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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## TEXT OF PROPOSED LAWS

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## PROPOSITION 30

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the California Constitution; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

## THE SCHOOLS AND LOCAL PUBLIC SAFETY PROTECTION ACT OF 2012

## SECTION 1. Title.

This measure shall be known and may be cited as “The Schools and Local Public Safety Protection Act of 2012.”

## SEC. 2. Findings.

(a) Over the past four years alone, California has had to cut more than \$56 billion from education, police and fire protection, healthcare, and other critical state and local services. These funding cuts have forced teacher layoffs, increased school class sizes, increased college fees, reduced police protection, increased fire response times, exacerbated dangerous overcrowding in prisons, and substantially reduced oversight of parolees.

(b) These cuts in critical services have hurt California’s seniors, middle-class working families, children, college students, and small businesses the most. We cannot afford more cuts to education and the other services we need.

(c) After years of cuts and difficult choices, it is necessary to turn the state around. Raising new tax revenue is an investment in our future that will put California back on track for growth and success.

(d) The Schools and Local Public Safety Protection Act of 2012 will make California’s tax system more fair. With working families struggling while the wealthiest among us enjoy record income growth, it is only right to ask the wealthy to pay their fair share.

(e) The Schools and Local Public Safety Protection Act of 2012 raises the income tax on those at the highest end of the income scale — those who can most afford it. It also temporarily restores some sales taxes in effect last year, while keeping the overall sales tax rate lower than it was in early 2011.

(f) The new taxes in this measure are temporary. Under the California Constitution the 1/4-cent sales tax increase expires in four years, and the income tax increases for the wealthiest taxpayers end in seven years.

(g) The new tax revenue is guaranteed in the California Constitution to go directly to local school districts and community colleges. Cities and counties are guaranteed ongoing funding for public safety programs such as local police and child protective services. State money is freed up to help balance the budget and prevent even more devastating cuts to services for seniors, working families, and small businesses. Everyone benefits.

(h) To ensure these funds go where the voters intend, they are put in special accounts that the Legislature cannot touch. None of these new revenues can be spent on state bureaucracy

or administrative costs.

(i) These funds will be subject to an independent audit every year to ensure they are spent only for schools and public safety. Elected officials will be subject to prosecution and criminal penalties if they misuse the funds.

## SEC. 3. Purpose and Intent.

(a) The chief purpose of this measure is to protect schools and local public safety by asking the wealthy to pay their fair share of taxes. This measure takes funds away from state control and places them in special accounts that are exclusively dedicated to schools and local public safety in the state Constitution.

(b) This measure builds on a broader state budget plan that has made billions of dollars in permanent cuts to state spending.

(c) The measure guarantees solid, reliable funding for schools, community colleges, and public safety while helping balance the budget and preventing further devastating cuts to services for seniors, middle-class working families, children, and small businesses.

(d) This measure gives constitutional protection to the shift of local public safety programs from state to local control and the shift of state revenues to local government to pay for those programs. It guarantees that schools are not harmed by providing even more funding than schools would have received without the shift.

(e) This measure guarantees that the new revenues it raises will be sent directly to school districts for classroom expenses, not administrative costs. This school funding cannot be suspended or withheld no matter what happens with the state budget.

(f) All revenues from this measure are subject to local audit every year, and audit by the independent Controller to ensure that they will be used only for schools and local public safety.

SEC. 4. Section 36 is added to Article XIII of the California Constitution, to read:

*SEC. 36. (a) For purposes of this section:*

*(1) “Public Safety Services” includes the following:*

*(A) Employing and training public safety officials, including law enforcement personnel, attorneys assigned to criminal proceedings, and court security staff.*

*(B) Managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders.*

*(C) Preventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services.*

*(D) Providing mental health services to children and adults to reduce failure in school, harm to self or others, homelessness, and preventable incarceration or institutionalization.*

*(E) Preventing, treating, and providing recovery services for substance abuse.*

*(2) “2011 Realignment Legislation” means legislation enacted on or before September 30, 2012, to implement the state budget plan, that is entitled 2011 Realignment and provides for the assignment of Public Safety Services responsibilities to*

local agencies, including related reporting responsibilities. The legislation shall provide local agencies with maximum flexibility and control over the design, administration, and delivery of Public Safety Services consistent with federal law and funding requirements, as determined by the Legislature. However, 2011 Realignment Legislation shall include no new programs assigned to local agencies after January 1, 2012, except for the early periodic screening, diagnosis, and treatment (EPSDT) program and mental health managed care.

(b) (1) Except as provided in subdivision (d), commencing in the 2011–12 fiscal year and continuing thereafter, the following amounts shall be deposited into the Local Revenue Fund 2011, as established by Section 30025 of the Government Code, as follows:

(A) All revenues, less refunds, derived from the taxes described in Sections 6051.15 and 6201.15 of the Revenue and Taxation Code, as those sections read on July 1, 2011.

(B) All revenues, less refunds, derived from the vehicle license fees described in Section 11005 of the Revenue and Taxation Code, as that section read on July 1, 2011.

(2) On and after July 1, 2011, the revenues deposited pursuant to paragraph (1) shall not be considered General Fund revenues or proceeds of taxes for purposes of Section 8 of Article XVI of the California Constitution.

(c) (1) Funds deposited in the Local Revenue Fund 2011 are continuously appropriated exclusively to fund the provision of Public Safety Services by local agencies. Pending full implementation of the 2011 Realignment Legislation, funds may also be used to reimburse the State for program costs incurred in providing Public Safety Services on behalf of local agencies. The methodology for allocating funds shall be as specified in the 2011 Realignment Legislation.

(2) The county treasurer, city and county treasurer, or other appropriate official shall create a County Local Revenue Fund 2011 within the treasury of each county or city and county. The money in each County Local Revenue Fund 2011 shall be exclusively used to fund the provision of Public Safety Services by local agencies as specified by the 2011 Realignment Legislation.

(3) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

(4) (A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide

programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.

(B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.

(C) Any new program or higher level of service provided by local agencies, as described in subparagraphs (A) and (B), above the level for which funding has been provided, shall not require a subvention of funds by the State nor otherwise be subject to Section 6 of Article XIII B. This paragraph shall not apply to legislation currently exempt from subvention under paragraph (2) of subdivision (a) of Section 6 of Article XIII B as that paragraph read on January 2, 2011.

(D) The State shall not submit to the federal government any plans or waivers, or amendments to those plans or waivers, that have an overall effect of increasing the cost borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, except to the extent that the plans, waivers, or amendments are required by federal law, or the State provides annual funding for the cost increase.

(E) The State shall not be required to provide a subvention of funds pursuant to this paragraph for a mandate that is imposed by the State at the request of a local agency or to comply with federal law. State funds required by this paragraph shall be from a source other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.

(5) (A) For programs described in subparagraphs (C) to (E), inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, if there are subsequent changes in federal statutes or regulations that alter the conditions under which federal matching funds as described in the 2011 Realignment Legislation are obtained, and have the overall effect of increasing the costs incurred by a local agency, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State.

(B) When the State is a party to any complaint brought in a federal judicial or administrative proceeding that involves one or more of the programs described in subparagraphs (C) to (E), inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, and there is a settlement or judicial or administrative order that imposes a cost in the form of a monetary penalty or has the overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State. Payment by the



State is not required if the State determines that the settlement or order relates to one or more local agencies failing to perform a ministerial duty, failing to perform a legal obligation in good faith, or acting in a negligent or reckless manner.

(C) The state funds provided in this paragraph shall be from funding sources other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.

(6) If the State or a local agency fails to perform a duty or obligation under this section or under the 2011 Realignment Legislation, an appropriate party may seek judicial relief. These proceedings shall have priority over all other civil matters.

(7) The funds deposited into a County Local Revenue Fund 2011 shall be spent in a manner designed to maintain the State's eligibility for federal matching funds, and to ensure compliance by the State with applicable federal standards governing the State's provision of Public Safety Services.

(8) The funds deposited into a County Local Revenue Fund 2011 shall not be used by local agencies to supplant other funding for Public Safety Services.

(d) If the taxes described in subdivision (b) are reduced or cease to be operative, the State shall annually provide moneys to the Local Revenue Fund 2011 in an amount equal to or greater than the aggregate amount that otherwise would have been provided by the taxes described in subdivision (b). The method for determining that amount shall be described in the 2011 Realignment Legislation, and the State shall be obligated to provide that amount for so long as the local agencies are required to perform the Public Safety Services responsibilities assigned by the 2011 Realignment Legislation. If the State fails to annually appropriate that amount, the Controller shall transfer that amount from the General Fund in pro rata monthly shares to the Local Revenue Fund 2011. Thereafter, the Controller shall disburse these amounts to local agencies in the manner directed by the 2011 Realignment Legislation. The state obligations under this subdivision shall have a lower priority claim to General Fund money than the first priority for money to be set apart under Section 8 of Article XVI and the second priority to pay voter-approved debts and liabilities described in Section 1 of Article XVI.

(e) (1) To ensure that public education is not harmed in the process of providing critical protection to local Public Safety Services, the Education Protection Account is hereby created in the General Fund to receive and disburse the revenues derived from the incremental increases in taxes imposed by this section, as specified in subdivision (f).

(2) (A) Before June 30, 2013, and before June 30 of each year from 2014 to 2018, inclusive, the Director of Finance shall estimate the total amount of additional revenues, less refunds, that will be derived from the incremental increases in tax rates made in subdivision (f) that will be available for transfer into the Education Protection Account during the next fiscal year. The Director of Finance shall make the same estimate by January 10, 2013, for additional revenues, less refunds, that will be received by the end of the 2012–13 fiscal year.

(B) During the last 10 days of the quarter of each of the first

three quarters of each fiscal year from 2013–14 to 2018–19, inclusive, the Controller shall transfer into the Education Protection Account one-fourth of the total amount estimated pursuant to subparagraph (A) for that fiscal year, except as this amount may be adjusted pursuant to subparagraph (D).

(C) In each of the fiscal years from 2012–13 to 2020–21, inclusive, the Director of Finance shall calculate an adjustment to the Education Protection Account, as specified by subparagraph (D), by adding together the following amounts, as applicable:

(i) In the last quarter of each fiscal year from 2012–13 to 2018–19, inclusive, the Director of Finance shall recalculate the estimate made for the fiscal year pursuant to subparagraph (A), and shall subtract from this updated estimate the amounts previously transferred to the Education Protection Account for that fiscal year.

(ii) In June 2015 and in every June from 2016 to 2021, inclusive, the Director of Finance shall make a final determination of the amount of additional revenues, less refunds, derived from the incremental increases in tax rates made in subdivision (f) for the fiscal year ending two years prior. The amount of the updated estimate calculated in clause (i) for the fiscal year ending two years prior shall be subtracted from the amount of this final determination.

(D) If the sum determined pursuant to subparagraph (C) is positive, the Controller shall transfer an amount equal to that sum into the Education Protection Account within 10 days preceding the end of the fiscal year. If that amount is negative, the Controller shall suspend or reduce subsequent quarterly transfers, if any, to the Education Protection Account until the total reduction equals the negative amount herein described. For purposes of any calculation made pursuant to clause (i) of subparagraph (C), the amount of a quarterly transfer shall not be modified to reflect any suspension or reduction made pursuant to this subparagraph.

(3) All moneys in the Education Protection Account are hereby continuously appropriated for the support of school districts, county offices of education, charter schools, and community college districts as set forth in this paragraph.

(A) Eleven percent of the moneys appropriated pursuant to this paragraph shall be allocated quarterly by the Board of Governors of the California Community Colleges to community college districts to provide general purpose funding to community college districts in proportion to the amounts determined pursuant to Section 84750.5 of the Education Code, as that code section read upon voter approval of this section. The allocations calculated pursuant to this subparagraph shall be offset by the amounts specified in subdivisions (a), (c), and (d) of Section 84751 of the Education Code, as that section read upon voter approval of this section, that are in excess of the amounts calculated pursuant to Section 84750.5 of the Education Code, as that section read upon voter approval of this section, provided that no community college district shall receive less than one hundred dollars (\$100) per full time equivalent student.

(B) Eighty-nine percent of the moneys appropriated pursuant to this paragraph shall be allocated quarterly by the Superintendent of Public Instruction to provide general purpose

funding to school districts, county offices of education, and state general-purpose funding to charter schools in proportion to the revenue limits calculated pursuant to Sections 2558 and 42238 of the Education Code and the amounts calculated pursuant to Section 47633 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon voter approval of this section. The amounts so calculated shall be offset by the amounts specified in subdivision (c) of Section 2558 of, paragraphs (1) through (7) of subdivision (h) of Section 42238 of, and Section 47635 of, the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon voter approval of this section, that are in excess of the amounts calculated pursuant to Sections 2558, 42238, and 47633 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon voter approval of this section, provided that no school district, county office of education, or charter school shall receive less than two hundred dollars (\$200) per unit of average daily attendance.

(4) This subdivision is self-executing and requires no legislative action to take effect. Distribution of the moneys in the Education Protection Account by the Board of Governors of the California Community Colleges and the Superintendent of Public Instruction shall not be delayed or otherwise affected by failure of the Legislature and Governor to enact an annual budget bill pursuant to Section 12 of Article IV, by invocation of paragraph (h) of Section 8 of Article XVI, or by any other action or failure to act by the Legislature or Governor.

(5) Notwithstanding any other provision of law, the moneys deposited in the Education Protection Account shall not be used to pay any costs incurred by the Legislature, the Governor, or any agency of state government.

(6) A community college district, county office of education, school district, or charter school shall have sole authority to determine how the moneys received from the Education Protection Account are spent in the school or schools within its jurisdiction, provided, however, that the appropriate governing board or body shall make these spending determinations in open session of a public meeting of the governing board or body and shall not use any of the funds from the Education Protection Account for salaries or benefits of administrators or any other administrative costs. Each community college district, county office of education, school district, and charter school shall annually publish on its Internet Web site an accounting of how much money was received from the Education Protection Account and how that money was spent.

(7) The annual independent financial and compliance audit required of community college districts, county offices of education, school districts, and charter schools shall, in addition to all other requirements of law, ascertain and verify whether the funds provided from the Education Protection Account have been properly disbursed and expended as required by this section. Expenses incurred by those entities to comply with the additional audit requirement of this section may be paid with funding from the Education Protection Account, and shall not be considered administrative costs for purposes of this section.

(8) Revenues, less refunds, derived pursuant to subdivision (f) for deposit in the Education Protection Account pursuant to this section shall be deemed "General Fund revenues," "General Fund proceeds of taxes," and "moneys to be applied by the State for the support of school districts and community college districts" for purposes of Section 8 of Article XVI.

(f) (1) (A) In addition to the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of 1/4 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on and after January 1, 2013, and before January 1, 2017.

(B) In addition to the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, an excise tax is hereby imposed on the storage, use, or other consumption in this State of tangible personal property purchased from any retailer on and after January 1, 2013, and before January 1, 2017, for storage, use, or other consumption in this state at the rate of 1/4 percent of the sales price of the property.

(C) The Sales and Use Tax Law, including any amendments enacted on or after the effective date of this section, shall apply to the taxes imposed pursuant to this paragraph.

(D) This paragraph shall become inoperative on January 1, 2017.

(2) For any taxable year beginning on or after January 1, 2012, and before January 1, 2019, with respect to the tax imposed pursuant to Section 17041 of the Revenue and Taxation Code, the income tax bracket and the rate of 9.3 percent set forth in paragraph (1) of subdivision (a) of Section 17041 of the Revenue and Taxation Code shall be modified by each of the following:

(A) (i) For that portion of taxable income that is over two hundred fifty thousand dollars (\$250,000) but not over three hundred thousand dollars (\$300,000), the tax rate is 10.3 percent of the excess over two hundred fifty thousand dollars (\$250,000).

(ii) For that portion of taxable income that is over three hundred thousand dollars (\$300,000) but not over five hundred thousand dollars (\$500,000), the tax rate is 11.3 percent of the excess over three hundred thousand dollars (\$300,000).

(iii) For that portion of taxable income that is over five hundred thousand dollars (\$500,000), the tax rate is 12.3 percent of the excess over five hundred thousand dollars (\$500,000).

(B) The income tax brackets specified in clauses (i), (ii), and (iii) of subparagraph (A) shall be recomputed, as otherwise provided in subdivision (h) of Section 17041 of the Revenue and Taxation Code, only for taxable years beginning on and after January 1, 2013.

(C) (i) For purposes of subdivision (g) of Section 19136 of the Revenue and Taxation Code, this paragraph shall be considered to be chaptered on the date it becomes effective.

(ii) For purposes of Part 10 (commencing with Section 17001) of, and Part 10.2 (commencing with Section 18401) of, Division 2 of the Revenue and Taxation Code, the modified tax brackets and tax rates established and imposed by this

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paragraph shall be deemed to be established and imposed under Section 17041 of the Revenue and Taxation Code.

(D) This paragraph shall become inoperative on December 1, 2019.

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(3) For any taxable year beginning on or after January 1, 2012, and before January 1, 2019, with respect to the tax imposed pursuant to Section 17041 of the Revenue and Taxation Code, the income tax bracket and the rate of 9.3 percent set forth in paragraph (1) of subdivision (c) of Section 17041 of the Revenue and Taxation Code shall be modified by each of the following:

(A) (i) For that portion of taxable income that is over three hundred forty thousand dollars (\$340,000) but not over four hundred eight thousand dollars (\$408,000), the tax rate is 10.3 percent of the excess over three hundred forty thousand dollars (\$340,000).

(ii) For that portion of taxable income that is over four hundred eight thousand dollars (\$408,000) but not over six hundred eighty thousand dollars (\$680,000), the tax rate is 11.3 percent of the excess over four hundred eight thousand dollars (\$408,000).

(iii) For that portion of taxable income that is over six hundred eighty thousand dollars (\$680,000), the tax rate is 12.3 percent of the excess over six hundred eighty thousand dollars (\$680,000).

(B) The income tax brackets specified in clauses (i), (ii), and (iii) of subparagraph (A) shall be recomputed, as otherwise provided in subdivision (h) of Section 17041 of the Revenue and Taxation Code, only for taxable years beginning on and after January 1, 2013.

(C) (i) For purposes of subdivision (g) of Section 19136 of the Revenue and Taxation Code, this paragraph shall be considered to be chaptered on the date it becomes effective.

(ii) For purposes of Part 10 (commencing with Section 17001) of, and Part 10.2 (commencing with Section 18401) of, Division 2 of the Revenue and Taxation Code, the modified tax brackets and tax rates established and imposed by this paragraph shall be deemed to be established and imposed under Section 17041 of the Revenue and Taxation Code.

(D) This paragraph shall become inoperative on December 1, 2019.

(g) (1) The Controller, pursuant to his or her statutory authority, may perform audits of expenditures from the Local Revenue Fund 2011 and any County Local Revenue Fund 2011, and shall audit the Education Protection Account to ensure that those funds are used and accounted for in a manner consistent with this section.

(2) The Attorney General or local district attorney shall expeditiously investigate, and may seek civil or criminal penalties for, any misuse of moneys from the County Local Revenue Fund 2011 or the Education Protection Account.

SEC. 5. Effective Date.

Subdivision (b) of Section 36 of Article XIII of the California Constitution, as added by this measure, shall be operative as of July 1, 2011. Paragraphs (2) and (3) of subdivision (f) of Section 36 of Article XIII of the California Constitution, as added by this measure, shall be operative as of January 1, 2012. All other provisions of this measure shall become operative the day after

the election in which it is approved by a majority of the voters voting on the measure provided.

SEC. 6. Conflicting Measures.

In the event that this measure and another measure that imposes an incremental increase in the tax rates for personal income shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

SEC. 7. This measure provides funding for school districts and community college districts in an amount that equals or exceeds that which would have been provided if the revenues deposited pursuant to Sections 6051.15 and 6201.15 of the Revenue and Taxation Code pursuant to Chapter 43 of the Statutes of 2011 had been considered “General Fund revenues” or “General Fund proceeds of taxes” for purposes of Section 8 of Article XVI of the California Constitution.

PROPOSITION 31

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the California Constitution and adds sections to the Education Code and the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Government Performance and Accountability Act

SECTION 1. Findings and Declarations

The people of the State of California hereby find and declare that government must be:

1. Trustworthy. California government has lost the confidence of its citizens and is not meeting the needs of Californians. Taxpayers are entitled to a higher return on their investment and the public deserves better results from government services.

2. Accountable for Results. To restore trust, government at all levels must be accountable for results. The people are entitled to know how tax dollars are being spent and how well government is performing. State and local government agencies must set measurable outcomes for all expenditures and regularly and publicly report progress toward those outcomes.

3. Cost-Effective. California must invest its scarce public resources wisely to be competitive in the global economy. Vital public services must therefore be delivered with increasing effectiveness and efficiency.

4. Transparent. It is essential that the public’s business be public. Honesty and openness promote and preserve the integrity of democracy and the relationship between the people and their government.