

**ITEM 2**  
**BUDGET UPDATE**

**Working Group’s Draft Legislation To Allow Commission to Adopt New Test  
Claim Decision to Replace Prior Decision Based on a Subsequent Change in  
Law**

***(Reconsiderations/Mandate Redeterminations)***

---

Senate Budget and Fiscal Review – Subcommittee Number 4

The Commission on State Mandates budget is set for hearing on April 29, 2010. There are no issues regarding the Commission’s operating budget. However, we expect discussion on the working group’s draft legislation on mandate redeterminations.

Since the March meeting, the Commission staff’s revised draft legislation has been modified by the Working Group (Senate and Assembly Budget Subcommittee Staff, Legislative Analyst’s Office, Department of Finance staff, and Commission staff).

The working group draft (Attachment) includes the following provisions:

1. Establishes a process for the Commission to adopt a new test claim decision to supersede a prior decision based on a “subsequent change in law.”
2. Defines “subsequent change in law.” This definition excludes amendments to article XIII B, section 6 of the Constitution that were approved by the voters on November 2, 2004. (Proposition 1.)
3. Requires the Commission to adopt procedures for receiving requests to adopt a new test claim decision, and for providing notice and a hearing on those requests; specifies what the procedures shall do.
4. Upon request of the Commission, requires the State Law Library, State Library, and State Archives to provide at no charge, copies of legislative and regulatory records that may assist the commission in determining a claim and a request to adopt a new test claim decision.
5. Amends Government Code section 17556 by adding language to conform subdivisions (a), (d), and (e) to subdivisions (c) and (f), amends subdivision (f) by deleting “reasonably within the scope of” language from the findings on ballot measures. This amendment would implement the CSBA court’s ruling on this subdivision.

§ 17556. Findings

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

- (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing

body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the state statute or executive was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the charges, fee, or assessment authority was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether the (1) offsetting savings that result in no net costs were enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued, or (2) the additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was appropriated before or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, ~~reasonably within the scope of,~~ or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

6. Amends Government Code section 17557, subdivisions (a) and (d) to clarify that proposed parameters and guidelines and proposed amendments to parameters and guidelines may include proposed reimbursable activities that are “reasonably necessary for the performance of the state-mandated program,” and subdivision (d), to describe what changes may be made through a request to amend parameters and guidelines.

A request to amend parameters and guidelines may be filed to make any of the following changes to parameters and guidelines:

- (1) Delete any reimbursable activity that is repealed by statute or executive order after the adoption of the original or last amended parameters and guidelines.
- (2) Update offsetting revenue and offsetting savings that apply to the mandated program and do not require a new legal finding that there are “no costs mandated by the state” under Section 17556, subdivision (e).
- (3) Include a reasonable reimbursement methodology for all or some of the reimbursable activities.
- (4) Clarify reimbursable activities consistent with the original statement of decision.
- (5) Add new reimbursable activities that are reasonably necessary for the performance of the original state-mandated program
- (6) Define what is not reimbursable consistent with the original statement of decision.
- (7) Consolidate the parameters and guidelines for two or more programs.
- (8) Amend the “boilerplate” language. For purposes of this section, “boilerplate” language is defined as the language in the parameters and guidelines that is not unique to the state-mandated program that is the subject of the parameters and guidelines.

#### Assembly Budget – Subcommittee Number 4

The Commission’s budget is set for hearing on May 4, 2010. We also expect the Assembly Budget Subcommittee to review the working group’s draft legislation.

DRAFT LEGISLATION TO ESTABLISH A  
MANDATE REDETERMINATION PROCESS

AND

AMEND GOVERNMENT CODE SECTIONS 17556 AND 17557

**SECTION 1**

**ADD NEW SECTION 17570 TO THE GOVERNMENT CODE TO READ:**

a. The commission may adopt a new test claim decision to supersede one previously adopted only upon a showing that the state’s liability pursuant to Article XIII B, Section 6, subdivision (a) of the California Constitution and Sections 17514 and 17556 of the Government Code has been modified based on a subsequent change in law.

b. For purposes of this section the following definitions shall apply:

(1) “Test claim decision” is defined as a decision of the Commission on State Mandates on a test claim filed pursuant to Government Code Section 17551 or a decision of the Board of Control, on a claim for state reimbursement filed under Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2227), and Article 3 (commencing with Section 2240) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code prior to January 1, 1985.

(2) A “subsequent change in law” is a change in “mandates law” or a change in law that effects a finding pursuant to Section 17556 of the Government Code. “Mandates law” is defined as published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates or addressing article XIII B, section 6 of the California Constitution, Government Code sections 17500 and following. “Mandates law” also includes statutory amendments to Government Code sections 17500 and following and amendments to article XIII B, section 6 of the California Constitution, except that a “subsequent change in law” does not include the amendments to article XIII B, section 6 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 Section 17551, subdivision (a).

- 1 c. A request to adopt a new test claim decision pursuant to this section may be filed by a  
2 local agency or school district, statewide association of local agencies or school districts,  
3 or the Department of Finance, Controller or other affected state agency.
- 4 d. The commission shall adopt procedures for receiving requests to adopt a new test claim  
5 decision pursuant to this section and for providing notice and a hearing on those requests.

6 The procedures shall do all of the following:

7 (1) Provide for presentation of evidence and legal argument by the requestor,  
8 interested parties, the Department of Finance, and any other affected state  
9 agency, and interested person.

10 (2) Permit the hearing to be postponed at the request of any party, without  
11 prejudice, until the next scheduled hearing.

12 (3) Specify that all requests for adoption of a new test claim decision shall be  
13 filed on a form prescribed by the commission that shall contain at least the  
14 following elements and documents:

15 (a) The name, case number, and adoption date of the prior test claim  
16 decision.

17 (b) A detailed analysis of how and why the state's liability for mandate  
18 reimbursement pursuant to Article XIII B, Section 6 of the California  
19 Constitution and Sections 17514 and 17556 has been modified.

20 (c) The actual or estimated amount of the annual statewide change in the  
21 state's liability for mandate reimbursement pursuant to Article XIII B,  
22 Section 6 of the California Constitution and Sections 17514 and  
23 17556.

24 (d) Identification of all of the following, if relevant:

- 25 1. Dedicated state funds appropriated for this program  
26 2. Dedicated federal funds appropriated for this program  
27 3. Fee authority to offset the costs of this program  
28 4. Federal law  
29 5. Court Decision  
30 6. State or local ballot measure and date of election

- 1 (e) All assertions of fact shall be supported with declarations under  
2 penalty of perjury, based on the declarant's personal knowledge,  
3 information or belief, and be signed by persons who are authorized and  
4 competent to do so, as follows:
- 5 1. Declarations of actual or estimated annual statewide costs that will  
6 or will not be incurred to implement the alleged mandate.
  - 7 2. Declarations identifying all local, state, or federal funds, or fee  
8 authority that may or may not be used to offset the increased costs  
9 that will or will not be incurred by claimants to implement the  
10 alleged mandate or result in a finding of no costs mandated by the  
11 state pursuant to Section 17556.
  - 12 3. Declarations describing new activities performed to implement  
13 specific provisions of the test claim statute or executive order  
14 alleged to impose a reimbursable state-mandated program.
  - 15 4. Specific references shall be made to chapters, articles, sections, or  
16 page numbers alleged to impose a reimbursable state-mandated  
17 program.
- 18 (f) The request for adoption of a new test claim decision shall be signed at  
19 the end of the document, under penalty of perjury by the requestor or  
20 its authorized representative, with the declaration that the request is  
21 true and complete to the best of the declarant's personal knowledge,  
22 information, or belief. The date of signing, the declarant's title,  
23 address, telephone number, facsimile machine telephone number, and  
24 electronic mail address shall be included.
- 25 (g) If a completed request is not received by the commission within 30  
26 calendar days from the date an incomplete request was returned by the  
27 commission, the original filing date may be disallowed.

- 1 e. A request for adoption of a new test claim decision shall be filed on or before June 30  
2 following a fiscal year in order to establish eligibility for reimbursement or loss of  
3 reimbursement for that fiscal year.<sup>1</sup>
- 4 f. If the commission adopts a new test claim decision that supersedes the one previously  
5 adopted and shows that the state's liability for mandate reimbursement pursuant to  
6 Article XIII B, Section 6 of the California Constitution and Sections 17514 and 17556  
7 has been modified, the commission shall adopt new parameters and guidelines or amend  
8 existing parameters and guidelines or reasonable reimbursement methodology pursuant to  
9 Sections 17557, 17557.1-17557.2.
- 10 g. Any new parameters and guidelines adopted or amendments made to existing parameters  
11 and guidelines or reasonable reimbursement methodology shall conform to the new test  
12 claim decision adopted by the commission.
- 13 h. The State Controller shall follow the procedures in Sections 17558, 17558.5, 17560,  
14 17561, and 17561.5, as applicable to the new test claim decision adopted by the  
15 commission pursuant to this section.
- 16 i. If the commission adopts a new test claim decision which will result in reimbursement  
17 pursuant to Article XIII B, Section 6 of the California Constitution and Sections 17514  
18 and 17556, it shall determine the amount to be subvended to local agencies and school  
19 districts by adopting a new statewide cost estimate pursuant to Section 17557.
- 20 j. The commission shall notify the Legislature pursuant to Section 17555 within 30 days of  
21 adopting a new test claim decision pursuant to this section, and report to the Legislature  
22 pursuant to Sections 17600 and 17601.

23 **SECTION 2**

24 **ADD NEW SECTION 17572 TO THE GOVERNMENT CODE TO READ:**

25 Upon request of the commission, the State Law Library, State Library, and State Archives, shall  
26 provide at no charge, copies of legislative and regulatory records that may assist the commission  
27 in determining a claim pursuant to Section 17551 and a request to adopt a new decision to  
28 supersede a test claim decision pursuant to this chapter.

29 **AMENDMENTS TO EXISTING LAW**

---

<sup>1</sup> This language is consistent with Government Code section 17557, subdivision (e).

1 **SECTION 3**

2 AMEND SECTION 17556 OF THE GOVERNMENT CODE TO READ:

3 § 17556. Findings

4 The commission shall not find costs mandated by the state, as defined in Section 17514, in  
5 any claim submitted by a local agency or school district, if, after a hearing, the commission  
6 finds any one of the following:

- 7 (a) The claim is submitted by a local agency or school district that requested legislative  
8 authority for that local agency or school district to implement the program specified in  
9 the statute, and that statute imposes costs upon that local agency or school district  
10 requesting the legislative authority. A resolution from the governing body or a letter from  
11 a delegated representative of the governing body of a local agency or school district that  
12 requests authorization for that local agency or school district to implement a given  
13 program shall constitute a request within the meaning of this subdivision. This  
14 subdivision applies regardless of whether the resolution from the governing body or a  
15 letter from a delegated representative of the governing body was adopted or sent prior to  
16 or after the date on which the state statute or executive was enacted or issued.
- 17 (b) The statute or executive order affirmed for the state a mandate that had been declared  
18 existing law or regulation by action of the courts.
- 19 (c) The statute or executive order imposes a requirement that is mandated by a federal law or  
20 regulation and results in costs mandated by the federal government, unless the statute or  
21 executive order mandates costs that exceed the mandate in that federal law or regulation.  
22 This subdivision applies regardless of whether the federal law or regulation was enacted  
23 or adopted prior to or after the date on which the state statute or executive order was  
24 enacted or issued.
- 25 (d) The local agency or school district has the authority to levy service charges, fees, or  
26 assessments sufficient to pay for the mandated program or increased level of service.  
27 This subdivision applies regardless of whether the charges, fee, or assessment authority  
28 was enacted or adopted prior to or after the date on which the state statute or executive  
29 order was enacted or issued.



1 (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for  
2 offsetting savings to local agencies or school districts that result in no net costs to the  
3 local agencies or school districts, or includes additional revenue that was specifically  
4 intended to fund the costs of the state mandate in an amount sufficient to fund the cost of  
5 the state mandate. This subdivision applies regardless of whether the (1) offsetting  
6 savings that result in no net costs were enacted or adopted prior to or after the date on  
7 which the statute or executive order was enacted or issued, or (2) the additional revenue  
8 that was specifically intended to fund the costs of the state mandate in an amount  
9 sufficient to fund the cost of the state mandate was appropriated before or after the date  
10 on which the statute or executive order was enacted or issued.

11 (f) The statute or executive order imposes duties that are necessary to implement, ~~reasonably~~  
12 ~~within the scope of~~, or expressly included in, a ballot measure approved by the voters in a  
13 statewide or local election. This subdivision applies regardless of whether the statute or  
14 executive order was enacted or adopted before or after the date on which the ballot  
15 measure was approved by the voters.

16 (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed  
17 the penalty for a crime or infraction, but only for that portion of the statute relating  
18 directly to the enforcement of the crime or infraction.

19 **SECTION 4**

20 AMEND SECTION 17557 OF THE GOVERNMENT CODE TO READ:

21 (a) If the commission determines there are costs mandated by the state pursuant to Section  
22 17551, it shall determine the amount to be subvended to local agencies and school districts  
23 for reimbursement. In so doing it shall adopt parameters and guidelines for  
24 reimbursement of any claims relating to the statute or executive order. The successful test  
25 claimants shall submit proposed parameters and guidelines within 30 days of adoption of  
26 a statement of decision on a test claim. The proposed parameters and guidelines may  
27 include proposed reimbursable activities that are reasonably necessary for the  
28 performance of the state-mandated program. At the request of a successful test claimant,  
29 the commission may provide for one or more extensions of this 30-day period at any time  
30 prior to its adoption of the parameters and guidelines. If proposed parameters and

1 guidelines are not submitted within the 30-day period and the commission has not  
2 granted an extension, then the commission shall notify the test claimant that the amount  
3 of reimbursement the test claimant is entitled to for the first 12 months of incurred costs  
4 will be reduced by 20 percent, unless the test claimant can demonstrate to the  
5 commission why an extension of the 30-day period is justified.

6 (b) In adopting parameters and guidelines, the commission may adopt a reasonable  
7 reimbursement methodology.

8 (c) The parameters and guidelines adopted by the commission shall specify the fiscal years  
9 for which local agencies and school districts shall be reimbursed for costs incurred.  
10 However, the commission may not specify in the parameters and guidelines any fiscal  
11 year for which payment could be provided in the annual Budget Act.

12 (d) A local agency, school district, or the state may file a written request with the commission  
13 to amend, ~~modify, or supplement the~~ parameters or guidelines. The commission may,  
14 after public notice and hearing, amend, ~~modify, or supplement the~~ parameters and  
15 guidelines. A parameters and guidelines amendment submitted within 90 days of the  
16 claiming deadline for initial claims, as specified in the claiming instructions pursuant to  
17 Section 17561, shall apply to all years eligible for reimbursement as defined in the  
18 original parameters and guidelines. A parameters and guidelines amendment filed more  
19 than 90 days after the claiming deadline for initial claims, as specified in the claiming  
20 instructions pursuant to Section 17561, and on or before the claiming deadline following  
21 a fiscal year, shall establish reimbursement eligibility for that fiscal year. A request to  
22 amend parameters and guidelines may be filed to make any of the following changes to  
23 parameters and guidelines:

24 (1) Delete any reimbursable activity that is repealed by statute or executive order  
25 after the adoption of the original or last amended parameters and guidelines.

26 (2) Update offsetting revenue and offsetting savings that apply to the mandated  
27 program and do not require a new legal finding that there are “no costs  
28 mandated by the state” under Section 17556, subdivision (e).

29 (3) Include a reasonable reimbursement methodology for all or some of the  
30 reimbursable activities.

- 1                   (4) Clarify reimbursable activities consistent with the original statement of  
2                                decision.
- 3                   (5) Add new reimbursable activities that are reasonably necessary for the  
4                                performance of the original state-mandated program
- 5                   (6) Define what is not reimbursable consistent with the original statement of  
6                                decision.
- 7                   (7) Consolidate the parameters and guidelines for two or more programs.
- 8                   (8) Amend the “boilerplate” language. For purposes of this section, “boilerplate”  
9                                language is defined as the language in the parameters and guidelines that is  
10                               not unique to the state-mandated program that is the subject of the parameters  
11                               and guidelines.
- 12           (e) A test claim shall be submitted on or before June 30 following a fiscal year in order to  
13                    establish eligibility for reimbursement for that fiscal year. The claimant may thereafter  
14                    amend the test claim at any time, but before the test claim is set for a hearing, without  
15                    affecting the original filing date as long as the amendment substantially relates to the  
16                    original test claim.
- 17           (f) In adopting parameters and guidelines, the commission shall consult with the Department  
18                    of Finance, the affected state agency, the Controller, the fiscal and policy committees of  
19                    the Assembly and Senate, the Legislative Analyst, and the claimants to consider a  
20                    reasonable reimbursement methodology that balances accuracy with simplicity.