

**ITEM 9**  
**TEST CLAIM**  
**PROPOSED STATEMENT OF DECISION**

Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664  
Statutes 1996, Chapter 786, Statutes 1998, Chapter 34, Statutes 1998, Chapter 673, Statutes 1999, Chapter 162, Statutes 1999, Chapter 736, Statutes 1999, Chapter 78  
California Department of Education Letter (May 22, 2000)

*Charter Schools III (99-TC-14)*

Western Placer Unified School District and Fenton Avenue Charter School, Claimants

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**EXECUTIVE SUMMARY**

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the May 25, 2006 hearing on the above named test claim.<sup>1</sup>

**Recommendation**

Staff recommends that the Commission adopt the Proposed Statement of Decision that accurately reflects the staff recommendation to approve the test claim. Minor changes, including those to reflect the hearing testimony and the vote count, will be included when issuing the final Statement of Decision.

However, if the Commission's vote on Item 8 modifies the staff analysis, staff recommends that the motion on adopting the Proposed Statement of Decision reflect those changes, which would be made before issuing the final Statement of Decision. In the alternative, if the changes are significant, it is recommended that adoption of a Proposed Statement of Decision be continued to the July 2006 Commission hearing.

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<sup>1</sup> California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664 Statutes 1996, Chapter 786, Statutes 1998, Chapter 34, Statutes 1998, Chapter 673, Statutes 1999, Chapter 162, Statutes 1999, Chapter 736, Statutes 1999, Chapter 78  
California Department of Education Letter (May 22, 2000)

Filed on June 29, 2000  
by Western Placer Unified School District and  
Fenton Avenue Charter School, Claimants.

Case No.: 99-TC-14

*Charter Schools III*

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

*(Proposed for adoption on May 25, 2006)*

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on May 25, 2006. [Witness list will be included in the final Statement of Decision.]

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., and related case law.

The Commission [adopted/modified] the staff analysis to partially approve the test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

**Summary of Findings**

The Commission finds that charter schools are not eligible claimants under article XIII B, section 6 of the California Constitution and applicable statutes. The Commission also finds that the test claim statutes impose a reimbursable state-mandated program on school districts or county offices of education within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- **Findings on denial:** Upon denial of a charter petition, a school district makes written findings of fact to support one or more of the following findings: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not

contain reasonably comprehensive descriptions, as specified in statute (§ 47605, subd. (b), amended by Stats. 1998, ch. 34).<sup>2</sup>

- **Transfer funds in lieu of property taxes:** except for local educational agencies that charge fees under Education Code section 47613, subdivision (c), a school district or county office of education that sponsors a charter school and transfers funds in lieu of property taxes to the charter school (§ 47635, added by Stats. 1999, ch. 78).
- **Financial information:** for school districts or county offices of education that are chartering authorities, including the revenues and expenditures generated by the charter school in the in the school district's or county office of education's annual statement, in a CDE-specified format. This activity is only reimbursable from May 22, 2000 until June 30, 2001.

The Commission also finds that, except for statutes over which it lacks jurisdiction because they were decided in a prior test claim, all other test claim statutes and executive orders pled by claimants do not contain a reimbursable state-mandated program.

### **Background**

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,<sup>3</sup> charter schools are exempt from most laws governing public education.<sup>4</sup> California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.<sup>5</sup>

Enacted between 1996 and 1999, the test claim statutes make various changes to the charter school funding and accountability laws. This test claim seeks reimbursement for charter schools and school districts.

Statutes 1996, chapter 786 created the Charter School Revolving Loan Fund to loan money to school districts for charter schools that are not conversions of existing schools, and modified the requirements for the charter document.

Another test claim statute (Stats. 1998, ch. 34) added former section 47613.5, subdivision (a), to the Education Code,<sup>6</sup> providing that, subject to certain exceptions, "charter school operational

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<sup>2</sup> This activity does not apply to a county office of education.

<sup>3</sup> Education Code section 47601 includes these reasons, among others, in the Legislature's intent behind establishing charter schools.

<sup>4</sup> Education Code section 47610. Exceptions to the exemption in section 47610 include teachers' retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605, subd. (c)(1)), and teacher credentials ((§ 47605, subd. (1)).

<sup>5</sup> Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); See <[http://www.lao.ca.gov/2004/charter\\_schools/012004\\_charter\\_schools.htm](http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm)> [as of January 13, 2006].

<sup>6</sup> All statutory references are to the Education Code unless otherwise indicated.

funding shall be equal to the total funding that would be available to a similar school district serving a similar pupil population.” “Operational funding” was defined to mean “all funding other than capital funding.” (Former § 47613.5, subd. (c)(1), repealed eff. July 7, 1999; now § 47630 et seq., Stats. 1999, ch. 78.) In addition to equalizing operational funding, chapter 34 also,

[E]xpanded the category of people who can sign a charter petition (§ 47605, subd. (a)); restricted a school district’s discretion to deny the petition (*id.*, subd. (b)); and increased a statewide cap on the number of charter schools (§ 47602, subd. (a)). Moreover, AB 544 required charter schools to be free, nonsectarian, nondiscriminatory, and open to all students (§ 47605, subd. (d)); to meet statewide standards and conduct the pupil assessments applicable to students in noncharter public schools (§ 47605, subd. (c)); to hire credentialed teachers (*id.*, subd. (l)); and to submit to state and local supervision and inspection (*id.*, subd. (k), § 47604.5, § 47607). All these changes reflect an intent on the part of the Legislature to reduce, if not eliminate, the practical distinctions between charter schools and district-run schools.<sup>7</sup>

Statutes 1999, chapter 162, among other changes, subjected charter schools to laws concerning minimum minutes of instruction, documentation of attendance, and participation in state testing programs. Statutes 1999, chapter 736 amended the Charter School Revolving Loan Fund, and made other changes to charter school funding.

Statutes 1999, chapter 78, made charter schools “local educational agencies” for purposes of special education funding under the federal Individuals with Disabilities Education Act (IDEA). Chapter 78 also created a charter school funding model that funds charter schools either locally through the school district or directly from the state.

The model consisted of three basic components: (1) revenue limit funding, (2) categorical block grant funding, and (3) separate categorical program funding—all of which were designed to yield charter school funding rates that were comparable to similar public schools. [¶]...[¶] [Before chapter 78 was enacted] ...charter schools received funding on a program-by-program basis through negotiation with their charter authorizer.<sup>8</sup>

Because either a school district or county office of education may grant a charter petition, any reference herein to a “school district” also applies to a county office of education if that is the entity that granted the charter (§ 47605.6) or is overseeing the charter (§ 47605, subd. (k)).<sup>9</sup>

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<sup>7</sup> *Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 998.

<sup>8</sup> Office of the Legislative Analyst, “Assessing California’s Charter Schools” (January 2004). See [http://www.lao.ca.gov/2004/charter\\_schools/012004\\_charter\\_schools.htm](http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm) [as of January 13, 2006].

<sup>9</sup> In certain situations, petitioners can also apply for a charter directly to the State Board of Education (Ed. Code, § 47605.8).

On May 26, 1994, the Commission heard and decided a related test claim: *Charter Schools*, (CSM-4437).<sup>10</sup> The Commission found that Statutes 1992, chapter 781 (Ed. Code, §§ 47605 & 47607) imposes a reimbursable state-mandated program for school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its Statement of Decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (Ed. Code, §§ 47605, subds. (j)(1) & (k)(3), 47605.5, 47607, & 47614) require reimbursable state-mandated activities for school districts and/or county offices of education for activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions (hereafter *Charter Schools* parameters and guidelines). School districts may charge a fee from one to three percent of the charter school's revenue for "supervisory oversight" of the charter school,<sup>11</sup> which fee is a recognized offset in the *Charter Schools* parameters and guidelines.

### **Claimants' Position**

Claimants contend that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimants request reimbursement for school district/county office of education and charter school costs for the following activities.

For school districts or county offices of education, claimants request reimbursement for:

- Calculating, processing and advancing payments of property taxes to charter schools.
- Responding to, preparing for, and participating in negotiations with the charter school regarding a share of the school district or county office's operational funding that a charter school does not receive under Chapter 6 (Ed Code, §§ 47630-47644).
- Responding to, preparing for, and participating in judicial appeals of decisions to approve a charter school petition, and if required, reconsider the charter petition.
- Responding to information for requests from the California Department of Education (CDE) or State Board of Education (SBE) for a charter that is appealed to SBE.<sup>12</sup>
- Preparation of and drafting written findings of fact for the denial of a charter petition.
- Preparing and adopting policies, procedures, and forms for reviewing and approving or denying charter petitions and other activities required by the test claim statutes and executive order and training staff regarding the requirement of the test claim legislation and the policies, procedures and forms.

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<sup>10</sup> *Charter Schools* (CSM-4437) Statement of Decision adopted on July 21, 1994; parameters and guidelines adopted on October 18, 1994.

<sup>11</sup> Education Code section 47613 (former section 47613.7, added by Stats. 1998, ch. 34).

<sup>12</sup> Any references to CDE or SBE in this test claim include the Superintendent of Public Instruction (SPI).

- Responding to, preparing for, and participating in negotiations regarding the development and execution of a memorandum of understanding to clarify the relationship between the charter school and school districts and delineates the responsibilities of the charter school that are not covered by the Charter Schools Act and the delivery of services provided by the school district or county office (e.g., special education services and funding).
- Responding to, preparing for, and participating in administrative proceedings which involve the school district or county office of education as the charter granting agency (e.g. audits of the charter school by the Controller).
- Responding to, preparing for, and participating in dispute resolution proceedings with a school district or county office granted charter school.
- Providing reimbursement to the Charter School Revolving Loan Fund for monies loaned to a charter school that is formed as or operated by a nonprofit public benefit corporation.
- Requesting, reviewing, analyzing and processing financial information and data from charter schools and compiling required forms and reports to submit to the CDE.
- Reviewing, analyzing, and modifying the SELPA plan and allocation plan to meet the needs of charter schools as specified in the revisions to Charter Schools Act.
- Receipt, review and analysis of the charter school annual independent financial audit, including the costs of meeting with the charter school and discussing and resolving any audit deficiencies.

For charter schools, claimants request reimbursement for:

- Responding to information requests from the granting authority or from the Superintendent of Public Instruction (SPI) and, preparing for, and participating in meetings regarding this information.
- Contracting with a third party to perform an annual financial audit.
- Preparation for and meeting with parents and teachers on an annual basis regarding the charter schools educational program.
- Reviewing and analyzing attendance data and conducting a public random drawing if the number of pupils who wish to attend the charter school exceeds the school's capacity.
- Advertising, interviewing, verifying credentials, and hiring credentialed teachers. Any additional teacher costs incurred as a result of having to hire credentialed teachers is reimbursable.
- Responding to, preparing for, and participating in dispute resolution proceedings with a school district or county office that granted the charter school.
- Responding to, preparing for, and participating in discussions with the granting authority regarding notices to cure. This activity includes receipt and review of notices, meeting, discussing, and corresponding with the granting authority regarding the alleged violation and any proposed cure, and reviewing and analyzing any proposed cure of the violation.

- Calculating, processing and paying the supervisorial oversight fee required by Education Code section 47613.7. This activity includes the cost of the fee paid by the charter school to the granting agency.
- Creation and maintenance of written contemporaneous records that document pupil attendance. This activity shall include the cost of producing these records for audit and inspection.
- Reviewing and certifying that pupils have participated in required state testing programs.
- Increasing instructional minutes offerings to meet the minimums stated in Education Code section 46201.
- Reviewing, analyzing and modifying a charter school independent study program to comply with Article 5.5 of the Education Code (commencing with Section 51745) and implementing regulations adopted thereunder. This activity includes the costs of any additional staff or staff time necessary to meet the minimum staffing ratios.
- Calculating, compiling and responding to requests from the granting agency for financial data to be reported to the state. This activity includes the cost of software and consultants necessary to compile the information to be compatible with the granting agency's reporting format (e.g. SACS).
- Preparing and adopting policies, procedures, and forms for the activities required by the test claim statutes and executive orders and training staff regarding the requirements of the test claim legislation and the policies, procedures and forms.

The claim includes a declaration certifying that the costs stated are true and correct, and that estimated costs exceed \$200, which was the standard under Government Code section 17564, subdivision (a), when the claim was filed.<sup>13</sup>

Claimants request that the *Charter Schools* parameters and guidelines be amended to include the new reimbursable activities in this Statement of Decision.

Claimants did not comment on the draft staff analysis.

### **State Agency Positions**

The Department of Finance (DOF) submitted comments in October 2000, stating that charter schools are not eligible claimants because they are not “school districts” within the meaning of Government Code section 17551, and that their existence is voluntary. DOF also argues that many of the alleged activities are part of the school districts’ normal overhead and operating cost, i.e., they are basic costs of doing business that are covered by general purpose appropriations. DOF further asserts that the state provided the school districts with authority to charge charter schools for administrative services provided to them, and that many of the pled activities are wholly optional and voluntary. These comments are discussed below.

No other state agencies commented on the test claim.

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<sup>13</sup> Currently, the claim must exceed \$1,000 in costs (Gov. Code, § 17564, subd. (a)).

DOF submitted comments on the draft staff analysis, agreeing that charter schools are not eligible claimants, and that school districts making written factual findings when denying a charter petition is not a reimbursable activity. As more fully explained in the analysis below, DOF disagrees with the draft analysis that the May 22, 2000 CDE letter contains a reimbursable mandate for reporting financial information, and disagrees that the transfer of funding in lieu of property taxes pursuant to Education Code section 47635 is a reimbursable mandate.

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>14</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>15</sup> “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>16</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>17</sup>

In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>18</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

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<sup>14</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>15</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>16</sup> *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

<sup>17</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174 (*Long Beach Unified School Dist.*).

<sup>18</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.<sup>19</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>20</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>21</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>22</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>23</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>24</sup>

### **Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

#### **A. Are charter schools eligible claimants?**

The first issue, which is one of first impression for the Commission, is whether charter schools are eligible claimants, independent of the school district that granted the charter.

By way of background, charters schools are formed through a petition signed by either (1) at least one-half of the parents of the pupils that the charter school estimates will enroll in the school in its first year of operation, or (2) at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year.<sup>25</sup> Charters are submitted to a school district that must approve it unless the district makes specified written

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<sup>19</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

<sup>20</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>21</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>22</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>23</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>24</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>25</sup> Education Code section 47605, subdivision (a)(1). In the case of an existing public school conversion to a charter school, the petition must be signed by not less than 50 percent of the permanent status teachers currently employed at the school (Ed. Code, § 47605, subd. (a)(2)).

findings regarding defects in the petition, the proposed program, or the charter.<sup>26</sup> If the district denies the petition, petitioners can appeal to the county office of education or State Board of Education.<sup>27</sup> In certain situations, petitioners can apply for a charter directly to the county office of education<sup>28</sup> or State Board of Education.<sup>29</sup>

Claimants argue that a charter school qualifies as a “school district” or alternatively, as a “local agency.” They cite section 47615, subdivision (a)(2): “charter schools are under the jurisdiction of the public school system.” Claimants also cite former section 47630 that states legislative intent “that each charter school shall be provided with operational funding that is equal to the total funding that would be available to a similar school serving a similar student population.” Claimants further submit that the State Controller’s Office treats charter schools as eligible claimants, which claimants assert, “is the only way charter schools will receive the full and fair funding the Legislature envisioned.” Claimants argue that this treatment,

... is consistent with the treatment of charter schools as a [sic] “school districts” for numerous other requirements of law (e.g., for special education – see Education Code Section 47640 et seq. which allows charter schools to be treated as a separate local educational agency; Education Code Section 47611.5 which allows charter schools to be treated as the school district “employer” for purposes of collective bargaining under the EERA; and Education Code Section 47650 and 47651 indicating a charter school shall be deemed to be a “school district” for purposes of funding which it shall receive directly from the State).

In its comments on the test claim, DOF argues that a charter school is not a proper claimant because it “is not a ‘school district’ within the meaning of Government Code section 17551.”<sup>30</sup> DOF further states:

[U]nlike school districts, charter schools upon seeking to be chartered and upon having their charter reauthorized every five years, operate an optional program and thus choose to accept the State’s requirements for such operation. ... [T]he charter school is simply an alternative to traditional public schools and are voluntarily created and reauthorized.<sup>31</sup>

As discussed below, the Commission finds that charter schools are not eligible claimants under article XIII B, section 6 and applicable statutes.

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<sup>26</sup> Education Code section 47605, subdivision (b).

<sup>27</sup> Education Code section 47605, subdivision (j).

<sup>28</sup> Education Code sections 47605.5 and 47605.6.

<sup>29</sup> Education Code section 47605.8.

<sup>30</sup> See Opposition and Recommendation of Department of Finance on 99-TC-14, submitted October 13, 2000, page 3. The definition of school district, for mandate purposes is actually in Government Code section 17519: “‘School District’ means any school district, community college district, or county superintendent of schools.”

<sup>31</sup> Opposition and Recommendation of Department of Finance on 99-TC-14, submitted October 13, 2000, pages 3 and 14.

In the *Kern High School Dist.* case,<sup>32</sup> the California Supreme Court considered whether school districts have a right to reimbursement for costs in complying with statutory notice and agenda requirements for various education-related programs that are funded by the state and federal government. The court held that in eight of the nine programs at issue, the claimants were not entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. As the court stated, “if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate.”<sup>33</sup>

In this case, the charter school is *voluntarily* participating in the charter program at issue. Because charter schools are initiated by petition of either parents or teachers, they are created voluntarily. No state mandate requires them to exist. Consequently, based on the reasoning in the *Kern* case regarding voluntary participation, charters schools are not entitled to reimbursement under article XIII B, section 6.

A second reason charter schools are not eligible for mandate reimbursement is because they are not part of the definition in Government Code section 17519, which defines “school district” for purposes of mandate reimbursement, as “any school district, community college district, or county superintendent of schools.”

As to this statutory argument, DOF asserts (1) charter schools are not “school districts” within the meaning of Government Code section 17551 and therefore, there is no statutory authority for the Commission to hear the school’s claim; (2) standard statutory construction and the plain meaning of Government Code section 17551 show that charter schools are not school districts within the meaning of section 17551; (3) both the Courts and the Attorney General have concluded that charter schools are neither legally separate nor independent from the chartering school district; (4) charter schools do not resemble, behave as, or have the powers of school districts and therefore they are not school districts; (5) good public policy and common sense dictate that the Legislature must be able to make changes to the experimental system. DOF argues that finding that charter schools are school districts for the purposes of mandate funding would frustrate that policy.

Claimants note that charter schools are treated as school districts for some purposes, such as special education,<sup>34</sup> collective bargaining,<sup>35</sup> and apportionment of funds.<sup>36</sup> The Commission notes that charter schools are deemed school districts for purposes of “Sections 8 and 8.5 of Article XVI of the California Constitution [Proposition 98 school funding.]”<sup>37</sup>

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<sup>32</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

<sup>33</sup> *Id.* at page 743. Emphasis in original.

<sup>34</sup> Education Code section 47604 et seq.

<sup>35</sup> Education Code section 47611.5.

<sup>36</sup> Education Code sections 47612, subdivision (c), 47650 and 47651.

<sup>37</sup> Education Code sections 47612, subdivision (c).

These examples, however, underscore that charter schools are not treated as school districts for purposes of mandate reimbursement under article XIII B, section 6. Charter schools are not mentioned in the mandates statutes (Gov. Code, § 17500 et seq.), nor are they considered “school districts” for purposes of mandate reimbursement in the charter school statutes (Ed. Code, § 47600 et seq.).

Charter schools were established in 1992 (Stats. 1992, ch. 781), long after the Commission’s statutory scheme in 1984. Although both statutory schemes have been amended in recent years,<sup>38</sup> the Legislature has not amended either scheme to make charter schools eligible claimants. For example, the definition of “school district” in Government Code section 17519 does not include charter schools. Nor can charter schools be read into that definition. The Commission, like a court, may not add to or alter the statutory language to accomplish a purpose that does not appear on the face of the statute or from its legislative history, where the language is clear.<sup>39</sup>

Moreover, the California Supreme Court has stated, “Where a statute, with reference to one subject [whether school districts includes charter schools] contains a given provision, the omission of such provision from a similar statute concerning a related subject ... is significant to show that a different intention existed.”<sup>40</sup> Thus, that the Legislature deemed a “charter school” to be a school district for some purposes (such as special education for example) cannot be interpreted to mean that a “charter school” should be deemed a school district for other purposes, such as mandate reimbursement. The omission of “charter school” from the definition of school districts in Government Code section 17519 is significant to show a different intention: that charter schools are not eligible for mandate reimbursement.

Therefore, the Commission finds that charter schools are not eligible claimants for purposes of article XIII B, section 6 of the California Constitution. Thus, the charter school activities in the test claim are not reimbursable.

**B. Does the Commission have jurisdiction over Statutes 1998, chapters 34 and 673, both of which were pled under the *Charter Schools II* test claim?**

Claimants plead Statutes 1998, chapters 34 and 673 that amended Education Code section 47605 and former 47613.7 (now § 47613). Both of these 1998 chapters and code sections were pled and decided in the *Charter Schools II* test claim (99-TC-03). Thus, the question is whether the Commission has jurisdiction over those statutes in the current test claim.

An administrative agency does not have jurisdiction to rehear a decision that has become final.<sup>41</sup> Since *Charter Schools II* was decided in November 2002, it became final in November 2005

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<sup>38</sup> For charter schools, in addition to the test claim statutes, see e.g., Statutes 2003, chapter 892. For the Commission, see e.g., Statutes 2004, chapter 890, Statutes 2002, chapter 1124, and Statutes 1999, chapter 643.

<sup>39</sup> *In Re. Jennings* (2004) 34 Cal. 4th 254, 265.

<sup>40</sup> *Id.* at page 273.

<sup>41</sup> *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

when the three-year statute of limitations expired.<sup>42</sup> A closer look at the statutes pled in that claim is warranted, however, to see whether the Commission heard and decided Education Code sections 47605 and 47613, as amended by Statutes 1998, chapters 34 and 673.

The *Charter Schools II* Statement of Decision made findings on all of section 47613 (among others not relevant here), but only made findings on subdivisions (j) and (k) of section 47605. The Commission found that section 47605, subdivision (j)(1), imposed a mandate for reviewing charter petitions submitted to the county board of education when the school district denies a charter school petition. The Commission also found that section 47605, subdivision (j)(3) did not impose a reimbursable state mandate for judicial review for a county board of education that fails to act on a charter petition within 120 days of receipt. As to subdivision (k)(3), the Commission found that it is reimbursable for school district review of charter petitions for renewal under certain circumstances. Regarding section 47613, which authorizes school districts or other chartering agencies to charge fees for supervisorial oversight of charter schools, the Commission found it is not a reimbursable state mandate.

In the current test claim, claimants also plead sections 47605 and 47613.7 (among others). Therefore, since some amendments to section 47605 were not decided in the *Charter Schools II* claim (only subdivisions (j) and (k) were pled and decided) the Commission finds that it retains jurisdiction over subdivision (b) of section 47605.<sup>43</sup> However, the Commission finds that it does not have jurisdiction over claims of activities based in section 47605, subdivisions (j)<sup>44</sup> and (k), and 47613.7 (now § 47613),<sup>45</sup> as amended by Statutes 1998, chapters 34 and 673, because these provisions were decided in the *Charter Schools II* test claim.

In sum, the Commission finds that it has jurisdiction over subdivision (b) of section 47605 amended by Statutes 1998, chapter 34 and 673, which is further discussed below. This includes the activities claimants allege of “preparing and adopting policies, procedures and forms for reviewing and approving or denying charter petitions and other [related] activities ... and training staff regarding the requirement of the test claim legislation and the policies, procedures and forms.” Claimants also plead, as an activity under section 47605, subdivision (b) (as amended by Stats. 1998, ch. 34) the activities of (1) requiring “a school district or county office

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<sup>42</sup> The statute of limitations for an administrative decision pursuant to Code of Civil Procedure section 1094.5 is three years. (Code Civ. Proc., § 338; *Long Beach Unified School Dist., supra.*, 225 Cal.App.3d at p. 169.)

<sup>43</sup> The Commission would also have jurisdiction over subdivisions (c), (d) and (l) of section 47605, but the claimants only plead charter school activities based on those subdivisions, and charter schools are not eligible claimants as discussed above.

<sup>44</sup> Section 47605, subdivision (j) (as amended by Stats. 1998, ch. 34) authorizes an appeal of a denied charter to SBE or county office of education. Claimant pled the activity of, “responding to information for requests from CDE or SBE for a charter that has been appealed to SBE.”

<sup>45</sup> Section 47613 authorizes the school district to charge a fee to the charter school for “supervisorial oversight.” In addition to a charter school activity (discussed above), claimants plead the activity of “Responding to, preparing for, and participating in administrative proceedings which involve the school district or county office of education as the charter granting agency (e.g., audits of the charter school by the Controller).”

of education to make written factual findings, specific to a particular charter school petition, setting forth specific facts for denial of a charter petition,” and (2) “responding to, preparing for, and participating in judicial appeals of decisions to approve a charter school petition, and if required, reconsider the petition.”

**C. Are any of the claimed school district activities federal mandates?**

**Special education:** Claimants plead sections 47640-47647 (as added by Stats. 1999, ch. 78) for: “Reviewing, analyzing, and modifying the SELPA plan<sup>46</sup> and allocation plan to meet the needs of charter schools as specified in the revisions to Charter Schools Act.”

Sections 47640 through 47647 were added to the Education Code to deem a charter school a “local education agency” for purposes of special education funding and compliance with the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).

Former section 47642 (as added by Stats. 1999, ch. 78) stated:

Notwithstanding Section 47651, [regarding apportionment of funds] all state and federal funding for special education apportioned on behalf on [sic] pupils enrolled in a charter school shall be included in the allocation plan adopted pursuant to subdivision (i) of Section 56195.7 [regarding the policymaking process for multidistrict SELPA distribution of state and federal funds among local education agencies] or Section 56836.05, [regarding multidistrict SELPA annual allocation plans] or both, **by the special education local plan area that includes the charter school.** [Emphasis added.]

Section 47643 (as added by Stats. 1999, ch. 78) states:

If the approval of a petition for a charter school requires a change to the allocation plan developed pursuant to subdivision (i) of Section 56195.7 or Section 56836.05, the change shall be adopted pursuant to the policymaking process of the special education local plan area.

Thus, the plain language of these test claim statutes requires including charter schools in SELPA plans. The issue is whether doing so is a federal mandate.

The federal statute cited in the test claim legislation<sup>47</sup> is the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), the purposes of which, among other things, is:

(1)(A) to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services ... (B) to ensure that the rights of children with disabilities and parents ... are protected; and (C) to assist States, localities, educational services agencies,

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<sup>46</sup> SELPA stands for “Special Education Local Plan Area.” It is a geographical region of school districts and the county office of education formed to provide the special education service needs of children living within the boundaries. Each SELPA develops a plan for special education services.

<sup>47</sup> See sections 47640, 47641, subdivision (a), and 47646, subdivision (a).

and Federal agencies to provide for the education of all children with disabilities ...<sup>48</sup>

Other purposes of the IDEA include, “early intervention services for infants and toddlers with disabilities ... to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities...and to assess, and ensure the effectiveness of efforts to educate children with disabilities.”<sup>49</sup> Assistance is available to states<sup>50</sup> and local educational agencies<sup>51</sup> that meet specified criteria.<sup>52</sup> IDEA also provides for Individualized Education Programs.<sup>53</sup> The predecessor to IDEA is the federal Education of the Handicapped Act, which since its 1975 amendments has,

... required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412 (a).) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states [citations omitted]. ... The Supreme Court has noted that Congress intended the act to establish “a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.” [Citations omitted.]<sup>54</sup>

In *Hayes v. Commission on State Mandates*, the court held that the Education of the Handicapped Act (later renamed IDEA) is a federal mandate on California.<sup>55</sup> *Hayes* also held, “To the extent the state implemented the act [IDEA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.”<sup>56</sup>

Since the *Hayes* court concluded that the state had “no true choice” in whether or not to implement the federal statute, the issue is whether California has a choice whether to make charter schools subject to IDEA. The Commission finds that it does not.

IDEA provides for subgrants to local educational agencies, “including public charter schools that operate as local educational agencies.”<sup>57</sup>

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<sup>48</sup> Title 20 United States Code section 1400 (d).

<sup>49</sup> *Ibid.*

<sup>50</sup> Title 20 United States Code sections 1411 and 1412.

<sup>51</sup> Title 20 United States Code section 1413.

<sup>52</sup> *Ibid.* Also, 34 Code of Federal Regulations part 300.110 (1999).

<sup>53</sup> Title 20 United States Code section 1414 (d).

<sup>54</sup> *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1587.

<sup>55</sup> *Id.* at page 1592.

<sup>56</sup> *Id.* at page 1594.

<sup>57</sup> 20 United States Code section 1411 (f).

IDEA also provides that,

A local educational agency is eligible for assistance under this subchapter for a fiscal year if such **agency submits a plan** that provides assurances to the State educational agency that the local education agency meets each of the following conditions: ...”<sup>58</sup> [¶]...[¶]

(5) In carrying out this subchapter with respect to charter schools that are public schools of the local educational agency, the local educational agency –

(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services **on site at the charter school** to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

(B) provides funds under this subchapter to those **charter schools** (i) on the same basis as the local educational agency provides funds to the local educational agency’s other public schools, including proportional distribution based on relative enrollment of children with disabilities; and (ii) at the same time as the agency distributes other Federal funds to the agency’s other public schools, **consistent with the State’s charter school law**.<sup>59</sup> [Emphasis added.]

Since IDEA requires local educational agencies to submit a plan that treats charter schools the same as other schools for purposes of funding and pupils with disabilities, the Commission finds that the plan is federally mandated, as are any amendments to the plan. Thus, because they are federal mandates, the Commission finds that sections 47640-47647 (as added by Stats. 1999, ch. 78) are not state mandates subject to article XIII B, section 6.

**D. Does the test claim legislation mandate an activity on school districts or county offices of education within the meaning of article XIII B, section 6?**

As stated above, a test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>60</sup> Thus, the issue here is whether the test claim statutes or executive order require an activity of school districts.

**Judicial appeals:** Claimants plead the activity of responding to, preparing for, and participating in judicial appeals of decisions to approve a charter school petition, and if required, reconsider the petition.<sup>61</sup> Claimants state that before the amendments to the Charter Schools Act by Statutes 1998, chapter 34, a school district had the discretion to deny a charter, but that a substantial part

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<sup>58</sup> 20 United States Code section 1413 (a). Although this statute reads as though it were a condition on funding, the *Hayes* case makes it clear that IDEA is a federal mandate.

<sup>59</sup> 20 United States Code section 1413 (a)(5).

<sup>60</sup> *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155, 174.

<sup>61</sup> Claimants note that the *Charter Schools II* test claim alleged costs for responding to, preparing for, and participating in judicial appeals of decisions to deny a charter school petition, while this test claim alleges costs for granting the charter.

of that discretion is removed by chapter 34. Thus, according to claimants, the law may compel a school district to grant a charter that may be challenged.

DOF states that claimants fail to explain how this is a “new program” or provides a “higher level of service.” DOF also states the following:

[P]etitioners ... have always had the ability to sue chartering school districts if they believed the law had been violated in the denial of their application. The amendment to section 47605 (b) does not change the legal rights of any party and actually aids the chartering school district because they now have standards with which they make their decision and by which a good defense can be raised. Moreover, with regards to the concern over litigation, there is no action required by this statute.

There is no mention of judicial review in Statutes 1998, chapter 34, (except in amended subdivision (j)(3), over which the Commission has no jurisdiction as discussed above).<sup>62</sup> Even if there were, preparation for or participation in judicial review proceedings is not mandated by law. Rather, they are voluntary responses to a lawsuit. Thus, the Commission finds that the activity of participating in judicial appeals is not mandated by the statute.

**Review audit:** Claimants plead the activity of “Receipt, review and analysis of the charter school annual independent financial audit. This activity shall include the costs of meeting with the charter school and discussing and resolving any audit deficiencies” (Ed. Code, § 47605, subd. (b)(5)(I) as amended by Stats. 1998, ch. 34).

This provision requires a school district to make written factual findings if a charter petition does not contain reasonably comprehensive descriptions as specified. One of the descriptions it must contain is (the ~~strikeout and italics~~ show how this statute was amended by Stats. 1998, ch. 34):

(I) The manner in which ~~an annual audit of the financial and programmatic operations of the school is to be conducted~~ annual, *independent*, financial audits shall be conducted, *which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.*

DOF argues that there is no requirement for the chartering school district to meet and confer with a charter school. The district is merely authorized to seek a meeting. DOF also states that the district administration fee would cover this activity, and that this activity should already be reimbursed as part of the *Charter Schools* parameters and guidelines, which provides reimbursement for monitoring charter school performance to determine if it has achieved its goals and objectives.

Because the statute merely describes a provision the charter must contain, the Commission finds that section 47605, subdivision (b)(5)(I), as amended by Statutes 1998, chapter 34, does not mandate an activity and therefore is not subject to article XIII B, section 6.

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<sup>62</sup> The *Charter Schools II* Statement of Decision found that costs for judicial review are not reimbursable (based on § 47605, subd. (j)(3), as amended by Stats. 1998, ch. 673).

**Negotiation for operational funds:** Claimants plead the activity of “Responding to, preparing for, and participating in negotiations with the charter school regarding a share of the school district or county office’s operational funding that a charter school does not receive under Chapter 6.” (Ed Code, § 47636, as added by Stats. 1999, ch. 78.)

Statutes 1999, chapter 78, added chapter 6 (§§ 47630-47664, among others) to the Education Code. Section 47636 states, in part, “(b) This chapter *may not be construed to prevent* a charter school from negotiating with a local educational agency for a share of operational funding from sources not otherwise set forth in this chapter ...” [Emphasis added.]

DOF states that this section does not require any activity on the part of the chartering school district. “If the ...district chooses to ‘meet and negotiate’ with the charter school such activity is clearly permitted, but is certainly not required.”

Because the language of the statute authorizes negotiation, but does not require it, the Commission finds that section 47636, as added by Statutes 1999, chapter 78, does not mandate an activity, and is therefore not subject to article XIII B, section 6.

**Dispute resolution:** Claimants plead the activity of “Responding to, preparing for, and participating in dispute resolution proceedings with a school district or county office that granted the charter school” (former Ed Code, § 47605 (b)(14) as amended by Stats. 1996, ch. 786, currently § 47605, subd. (b)(5)(N)).

Section 47605, subdivision (b)(5)(N) requires the charter to include a description of “The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.”

DOF states that “there is no requirement for formal proceedings in the statute. ... it is simply a requirement placed on the petitioner to describe the procedure. ...even if some action is mandated, this can certainly reimbursed [sic] from any the [sic] administrative fees that may be charged ... to a charter school.”

This statute merely requires the charter petitioner to put a description of dispute resolution procedures in the charter. Thus, the Commission finds that former section 47605, subdivision (b)(14), as amended by Statutes 1996, chapter 786, is not subject to article XIII B, section 6, because it does not mandate a school district to participate in dispute resolution.

**Negotiations and memorandum of understanding:** Claimants also plead the activities of responding to, preparing for, and participating in negotiations regarding the development and execution of a memorandum of understanding to clarify the relationship between the charter school and school districts that delineates the responsibilities of the charter school that are not covered by the Charter Schools Act and the delivery of services provided by the school district or county office (e.g., special education services and funding).

There is no statutory requirement to participate in negotiations and execute a memorandum of understanding to clarify the relationship between the charter school and the school district. Therefore, the Commission finds that this activity is not subject to article XIII B, section 6.

**Reimburse loan fund:** Claimants plead two activities based on section 41365 (as amended by Stats. 1999, ch. 736). First, claimants plead providing reimbursement to the Charter School Revolving Loan fund for monies loaned to a charter school that is formed as or operated by a

nonprofit public benefit corporation. Claimants also plead the activity of being liable for a loan that was made to a charter school that is incorporated. The statute at issue was amended by Statutes 1999, chapter 736 as follows (note strikeout deletions and italics for additions):

(b) Loans may be made from moneys in the Charter School Revolving Loan Fund to ~~school districts~~ *a chartering authority* for charter schools that are not a conversion of an existing school, *or directly to a charter school that qualifies to receive funding pursuant to Chapter 6 (commencing with Section 47630) that is not a conversion of an existing school*, upon application of a ~~school district~~ *chartering authority or charter school* and approval by the Superintendent of Public Instruction. A loan is for use by the charter school during the period from the date the charter is granted pursuant to Section 47605 ~~and to the end of the~~ fiscal year in which the charter school first enrolls pupils. Money loaned to a ~~school district~~ *chartering authority* for a charter school, *or to a charter school*, pursuant to this section shall be used only to meet the purposes of the charter granted pursuant to Section 47605. The loan to a ~~school district~~ *chartering authority* for a charter school, *or to a charter school*, pursuant to this subdivision shall not exceed *two hundred fifty thousand dollars* ~~(\$50,000)~~ *(\$250,000)*. This subdivision does not apply to a *charter school that obtains* renewal of a charter pursuant to Section 47607.

(c) ~~During each of the two successive fiscal years~~ Commencing with the first fiscal year following the fiscal year the charter school first enrolls pupils, the Controller shall deduct from apportionments made to the ~~school district~~ *chartering authority or charter school*, ~~an amount equal to one half of the amount loaned to the school district~~ for the charter school under this section and pay the same amount into the Charter School Revolving Loan Fund in the State Treasury. *Repayment of the full amount loaned to the chartering authority shall be deducted by the Controller in equal annual amounts over a number of years agreed upon between the loan recipient and the State Department of Education, not to exceed five years for any loan.*

(d) (1) *Notwithstanding other provisions of law, a loan may be made directly to a charter school pursuant to this section only in the case of a charter school that is incorporated.*

(2) *Notwithstanding other provisions of law, in the case of default of a loan made directly to a charter school pursuant to this section, the chartering authority shall, also, be liable for repayment of the loan.*

Claimants plead two activities. As to the first: ‘reimbursing the loan fund for loan(s) to a charter school that is formed as or operated by a nonprofit public benefit corporation,’ there is no language in the statute that requires this. Obtaining a loan is merely authorized. Subdivision (d)(1) states, “a loan *may* be made directly to a charter school ...” [Emphasis added.] Therefore, the Commission finds that this activity is not mandated by the state, and therefore, not subject to article XIII B, section 6.

As to the second activity of being liable for a charter school loan in the event of default, subdivision (d)(2) of section 41365 (as amended by Stats. 1999, ch. 736) states, “in the case of default of a loan made directly to a charter school pursuant to this section, the chartering

authority shall,<sup>63</sup> also, be liable for repayment of the loan.” However, being liable for a loan is not a reimbursable activity. Repayment is provided for in subdivision (c) of the statute by requiring the State Controller to deduct loan payments. As to the loan itself, reduction in state funding (in this case, for the Controller to deduct loan payments) does not transform the costs into a reimbursable mandate.<sup>64</sup>

Therefore, the Commission finds that school district liability for a charter school loan is not a reimbursable activity subject to article XIII B, section 6.<sup>65</sup>

**Findings on denial:** Claimants plead the activity of requiring “a school district or county office of education to make written factual findings, specific to a particular charter school petition, setting forth specific facts for denial of a charter petition.” (Ed. Code, § 47605, subd. (b), as amended by Stats. 1998, ch. 34).

The 1998 amendment added to the statute, in pertinent part, “The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings: ...”

DOF comments as follows:

Section 47605 (b), amended by Chap. 34/98, creates a state mandate because a *Chartering School District* is now required to make written factual findings regarding a particular charter school petition. ... While this explicit requirement is new, DOF requests the Commission to develop the parameters and guidelines for this within the context of *Charter Schools I*.

Section 47605, subdivision (b), mandates an activity on school districts by requiring written factual findings when a charter petition is denied. Therefore, the Commission finds that this statute is subject to article XIII B, section 6,<sup>66</sup> so it is further discussed below under issues 2 and 3.

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<sup>63</sup> According to Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>64</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 748, citing *County of Sonoma*, *supra*, 84 Cal.App.4th 1264.

<sup>65</sup> As alternative grounds for denial, the activity is not new, as school districts were liable for loans under the prior statute (former Ed. Code, § 41365, subd. (b)). And the test claim statute was later amended (Stats. 2000, ch. 586) to make charter schools liable for their own loans.

<sup>66</sup> Claimants also plead the following activities: (1) preparing and adopting policies, procedures, and forms for reviewing and approving or denying charter petitions, and other activities required by the test claim statutes and executive order and (2) training staff regarding the requirement of the test claim legislation and the policies, procedures and forms. Claimants provide no citation or authority for these activities.

Subdivision (b) of section 47605 states that after charter petition review and a public hearing, “the school district shall either grant or deny the charter” within a specified timeframe unless the district makes “written factual findings, specific to the particular petition” that it should not be approved. Criteria for denial are also specified under subdivision (b). However, the claimed

**Transfer funds in lieu of property taxes:** Claimants plead the activity of “Calculating, processing and advancing payments of property taxes to charter schools.”

The test claim statute, Education Code section 47635, states in part:

(a) A sponsoring local educational agency *shall* annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts: ... (b) The sponsoring local educational agency *shall* transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15<sup>th</sup> of each month.<sup>67</sup> [Emphasis added.]

DOF argues that these requirements do not constitute a new program or higher level of service because the district would have to incur financing costs and interest for the average daily attendance irrespective of the child’s attendance in a charter school or other school in the district. DOF argues that “in virtually all cases where financing would have been necessary, the chartering school district would incur the cost of financing cash flow for property tax timing with or without the charter school in existence.”

Section 47635 requires a school district or county office of education to transfer funding as prescribed because it uses the word “shall.”<sup>68</sup> The Commission finds, therefore, that section 47635, as added by Statutes 1999, chapter 78, is subject to article XIII B, section 6 because it mandates an activity on a “sponsoring local educational agency” (i.e., school district or county office of education).

**Financial information:** Claimants plead the activity of “Requesting, reviewing, analyzing and processing financial information and data from charter schools and compiling required forms and reports to submit to the CDE. Claimants maintain that this activity is mandated by a letter from CDE, dated May 22, 2000, which requires charter granting agencies to include charter school financial information in the granting agency’s annual statement of all receipts and expenditures.

The Commission finds that the CDE letter is an “executive order” as defined by Government Code section 17516.<sup>69</sup> The letter states, in pertinent part,

Because the LEA [local educational agency, i.e., school district] is responsible for reporting all of its revenues and expenditures [Ed. Code, §§ 1628 & 42100] the

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activities of preparing policies and procedures and training staff do not appear on the face of the statute. Therefore, the Commission finds that adopting policies and procedures and forms are not activities that are mandated by the state under section 47605, subdivision (b). These activities may be considered during the parameters and guidelines phase to determine whether they are “the most reasonable methods of complying with [a] mandate.” (Cal. Code Regs., tit 2, § 1183.12, subd. (b)(2)).

<sup>67</sup> Added by Statutes 1999, chapter 78.

<sup>68</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>69</sup> According to Government Code section 17516, an ‘executive order’ for mandates purposes is “any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government.”

LEA must include the revenues and expenditures generated by the charter school in the LEA's annual statement.

CDE required including this information in the annual statement only between May 22, 2000 and June 30, 2001, because the May 22, 2000 CDE letter was superseded by subsequent CDE correspondence. In a letter to county education officials dated April 5, 2004, CDE states,

The submission of charter school financial data to CDE has been optional for the past two fiscal years. Now that the regulations and reporting formats required by *Education Code* sections 1628 and 42100 (as amended by AB 1994) are in place, **charter school financial reporting is required for fiscal year 2003-2004 and for subsequent fiscal years.**<sup>70</sup> [Emphasis in original.]

Given that the submission of charter school financial data to CDE has "been optional for the past two fiscal years," referring to fiscal years 2001-2002 and 2002-2003, the reports were voluntary during that period and therefore were not mandated by the state. The Commission finds, therefore, that the charter school financial information submitted by a school district or county office of education to CDE is only a reimbursable activity from May 22, 2000 (the date of the CDE letter) until June 30, 2001 (the last date of fiscal year 2000-2001).

DOF states, "This is not a mandate because financial reporting from schools within a district is not a new program. These activities were always a part of the duties of the District and would be necessary without designation of a school as a charter school." DOF's argument goes to the existence of a new program or higher level of service (discussed below), not a state-mandated program.

There is no requirement in the CDE letter, as claimant alleges, for "requesting, reviewing, analyzing and processing" financial information. Therefore, the Commission finds that these activities are not mandated by the letter, but they may be considered during the parameters and guidelines phase to determine whether they are the most reasonable methods of complying with the mandate.<sup>71</sup>

The CDE letter, however, uses the term 'must,' which is mandatory.<sup>72</sup> Thus, based on its plain language, the Commission finds that between May 22, 2000 and June 30, 2001, the CDE letter imposed a state mandate on school districts for including the revenues and expenditures generated by the charter school in the LEA's annual statement, in a format specified by CDE. Since this activity is subject to article XIII B, section 6, it is further discussed below.

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<sup>70</sup> See <<http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp>> as of January 20, 2006. Because no test claim has been filed on it, the Commission makes no finding on this April 5, 2004 CDE letter or the statutes cited in it.

<sup>71</sup> California Code of Regulations, title 2, section 1183.12, subdivision (b)(2).

<sup>72</sup> *California Teachers Assn. v. Governing Board* (1977) 70 Cal.App.3d 833, 842.

**E. Does the remaining test claim legislation constitute a “program” within the meaning of article XIII B, section 6?**

Of the activities discussed above, only the following are subject to article XIII B, section 6. Thus, the “test claim legislation” now refers only to these activities and statutes or executive order:

- **Findings on denial:** making written factual findings, specific to a particular charter school petition, setting forth specific facts for denial of a charter petition, (§ 47605, subd. (b), as amended by Stats. 1998, ch. 34).
- **Transfer funds in lieu of property taxes:** transferring funds in lieu of property tax payments to charter schools, (§ 47635, added by Stats. 1999, ch. 78).
- **Financial information:** between May 22, 2000 and June 30, 2001, including the revenues and expenditures generated by the charter school in the LEA’s annual statement (letter from CDE, dated May 22, 2000).

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program,” defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>73</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>74</sup>

The remaining activities at issue concern administration and oversight of charter schools or handling of charter school petitions, all of which are related to public education. The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.<sup>75</sup> Thus, the Commission finds that the test claim legislation constitutes a program that carries out the governmental function of providing a service to the public.

Moreover, the activities are solely applicable to school districts or county offices of education. Therefore, the test claim legislation imposes unique requirements on these organizations that do not apply generally to all residents or entities of the state. Accordingly, the Commission finds that the test claim legislation constitutes a “program” and is therefore subject to article XIII B, section 6 of the California Constitution.

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<sup>73</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>74</sup> *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

<sup>75</sup> *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at 172 states, “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public.”

**Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?**

To determine whether the “program” is new or imposes a higher level of service, the test claim legislation is compared to the legal requirements in effect immediately before enacting the test claim legislation.<sup>76</sup> Each activity is discussed separately.

**Findings on denial:** Section 47605, subdivision (b), as amended by Statutes 1998, chapter 34, prohibits districts from denying a charter petition unless it makes written findings of fact that (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions of specified subject matter.

Prior law authorized the district to approve the charter if it determined that the petition contained the required number of signatures and descriptions of (1) the educational program of the school, (2) the measurable pupil outcomes, (3) method by which pupil progress toward meeting pupil outcomes is measured; (4) governance structure of the school, including process to ensure parental involvement; (5) qualifications of employees; etc (all of which are still required in the charter).

DOF comments “while this explicit requirement is new, DOF requests the Commission to develop the parameters and guidelines for this within the context of *Charter Schools I* [under which districts] are permitted to file mandate claims for the statutory requirement that they grant or deny the petition within 60 days of receiving the petition.”<sup>77</sup>

Because the district is now required to make written findings in case of a charter petition denial that it was not required to make under prior law, the Commission finds that section 47605, subdivision (b), as amended by Statutes 1998, chapter 34, constitutes a new program or higher level of service for making written findings of fact that: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions, as specified in the statute.

**Transfer funds in lieu of property tax:** Section 47635, added by Statutes 1999, chapter 78 states, in part, “(a) A sponsoring local educational agency shall annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts: ... (b) The sponsoring local educational agency shall transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15<sup>th</sup> of each month.”<sup>78</sup>

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<sup>76</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>77</sup> Claimants state that they would request that the *Charter Schools* parameters and guidelines be amended to include new reimbursable activities under this claim.

<sup>78</sup> This provision was amended by Statutes 2001, chapter 586 to add subdivision (b)(5), excluding pupils in a charter school of a nonbasic aid school district under certain circumstances, subject to exceptions.

Under prior law, charter schools received funding through apportionments from the Superintendent of Public Instruction (SPI).<sup>79</sup>

In its comments on the draft staff analysis, DOF argues that this activity is not a new program or higher level of service:

...providing funding to local schools, whether or not a charter school, is an ordinary and historical activity of school districts and county offices of education. Depending on the proportion of total funding that property taxes constitute, the chartering authority would have to incur the cost of financing cash flow for property tax timing with or without the charter school in existence. Any administrative costs of the funding transfer associated with the existence of a charter school would be minimal, and in the case of conversion charter schools, not a new cost.

DOF cites no legal requirement for this ‘ordinary and historical’ activity. And although the Education Code indicates that the SPI computes property taxes for allocation by each county superintendent of schools,<sup>80</sup> there is no requirement for county superintendents or districts to monthly transfer funds in lieu of property taxes to schools as the test claim statute does. Moreover, DOF ignores prior law (former Ed. Code, § 47612), which before it was repealed by Statutes 1999, chapter 78, required the SPI to apportion funds to charter schools, in contrast to the test claim statute that requires school districts to transfer funds to charter schools.<sup>81</sup> Finally, even assuming the transfer of funds were required of school districts under prior law, there is no indication the requirement would have applied to charter schools because Education Code section 47610 exempts charter schools from most laws governing school districts.<sup>82</sup>

Therefore, because the record indicates that local educational agencies (school districts or county offices of education that would perform this activity) were not required before the test claim statute to transfer funds in lieu of property taxes, the Commission finds that doing so in accordance with section 47635 constitutes a new program or higher level of service on school districts. This is limited to the administrative activity of transferring the funds to charter schools.

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<sup>79</sup> Former Education Code section 47612, repealed by Statutes 1999, chapter 78.

<sup>80</sup> Education Code sections 2570 and 2571.

<sup>81</sup> Under this repealed section, the funds were apportioned “pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24 [of the Education Code].” (former Ed. Code, § 47612). Section 42238, subdivision (h), requires the SPI to apportion to each school district funds minus property tax revenue “pursuant to ... Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) .... of the Revenue and Taxation Code.” These Revenue and Taxation Code sections require the county auditor to apportion revenues to school entities (§ 75.7, subd. (c) & § 96). There is no requirement on school districts.

<sup>82</sup> And if fund transfers from districts to schools were past practice but not legally required, the test claim statute could be a reimbursable mandate anyway under Government Code section 17565, which states: “If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

**Financial information:** In a letter to school districts and county offices of education from CDE dated May 22, 2000, CDE stated:

Because the LEA [local educational agency] is responsible for reporting all of its revenues and expenditures [Ed. Code, §§ 1628 & 42100] the LEA must include the revenues and expenditures generated by the charter school in the LEA's annual statement.

As noted above, including this information in the district's annual statement was required only between May 22, 2000 and June 30, 2001, because the CDE letter was superseded by April 5, 2004 CDE correspondence that stated "The submission of charter school financial data to CDE has been optional for the past two fiscal years [i.e., 2001-2002 and 2002-2003]."<sup>83</sup>

DOF states, "This is not a mandate because financial reporting from schools within a district is not a new program. These activities were always a part of the duties of the District and would be necessary without designation of a school as a charter school." DOF reiterates this argument in its comments on the draft staff analysis.

Under Education Code section 42100, the school district files "an annual statement of all receipts and expenditures of the district for the preceding fiscal year" with the Superintendent of Public Instruction. Section 1628 contains a parallel reporting provision for county offices of education. Charter schools were outside the scope of these reporting requirements, however, until these sections were amended by Statutes 2002, chapter 1058.<sup>84</sup>

Charter schools are generally exempt from the provisions of the Education Code,<sup>85</sup> and until the CDE letter, no exception was made for financial reporting. In other words, prior to the May 22, 2000 CDE letter, school districts were not required to provide charter school revenue and expenditure information to CDE. Therefore, the Commission finds that including the revenues and expenditures generated by the charter school in the school district's or county office of education's annual statement to CDE is a new program or higher level of service.

**Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

In order for the test claim legislation's activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.<sup>86</sup> In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as:

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<sup>83</sup> See <<http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp>> as of January 20, 2006. Because no test claim has been filed on it, the Commission makes no finding on this April 5, 2004 CDE letter or the statutes cited in it.

<sup>84</sup> This analysis makes no findings on Education Code sections 42100 and 1628, as amended by Statutes 2002, chapter 1058 because no test claim has been filed on the amended statutes.

<sup>85</sup> Education Code section 47610.

<sup>86</sup> *Kern High School Dist.*, *supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The final issue is whether the test claim legislation imposes costs mandated by the state within the meaning of Government Code sections 17556 and 17514.

As a result of Statutes 1998, chapter 34, (Ed. Code, § 47613, former § 47613.7)<sup>87</sup> school districts (or other chartering agencies, as defined in (e) below) may charge a fee from one to three percent of the charter school's revenue for "supervisory oversight." This fee statute states:

(a) Except as set forth in subdivision (b), a chartering agency may charge for the actual costs of supervisory oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering agency may charge for the actual costs of supervisory oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.

(c) A local agency that is given the responsibility for supervisory oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the actual costs of supervisory oversight, and administrative costs necessary to secure charter school funding.<sup>[88]</sup> A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b).

(d) This section does not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source.

(e) For the purposes of this section, a chartering agency means a school district, county department of education, or the State Board of Education, that granted the charter to the charter school.

(f) For the purposes of this section, "revenue of the charter school" means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.

Although the term "supervisory oversight" is not defined in statute, the duties of a chartering authority for which the fee may be charged were enacted after the test claim statutes in Education Code sections 47604.32 (duties of chartering authority) and 47604.33 (annual financial reports).<sup>89</sup> In a report on charter schools, the Office of the Legislative Analyst stated:

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<sup>87</sup> In its Statement of Decision for *Charter Schools II*, the Commission determined that section 47613 does not contain a reimbursable state-mandated program. The section 47613 fee, however, is a recognized offset in the *Charter Schools II* consolidated parameters and guidelines.

<sup>88</sup> As originally enacted, the sentence ended with "not to exceed 3 percent of the revenue of the charter school."

<sup>89</sup> Added by Statutes 2003, chapter 892. The Commission makes no findings on these code sections because no test claim has been filed on them.

The oversight fee is intended to help a school district pay for such activities as reviewing charter petitions, evaluating charter school reports, responding to complaints from charter school parents, investigating charter school fiscal irregularities, and visiting charter school sites.<sup>90</sup>

Thus, the issue is whether Government Code section 17556, subdivision (d), would preclude reimbursement for the remaining activities. This provision states:

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 that: [¶]...[¶]

(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.

Each of the remaining activities in the test claim legislation is analyzed to determine whether the school district fee of section 47613 would preclude reimbursement within the meaning of Government Code section 17556, subdivision (d).

**Findings on denial:** Section 47605, subdivision (b), (as amended by Stats. 1998, ch. 34), prohibits districts from denying a charter petition unless it makes written findings of fact of one or more of the following: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions, as specified.

Because these findings would be made upon denial of a petition, there would be no charter school to which “supervisory oversight” would apply. Therefore, this provision falls outside the charter school fee the district may charge. As a result, the Commission finds that section 47605, subdivision (b), as amended by Statutes 1998, chapter 34, imposes costs mandated by the state, and that Government Code section 17556, subdivision (d) does not apply.

**Transfer funds in lieu of property taxes:** Section 47635, (added by Stats. 1999, ch. 78) states, in part,

(a) A sponsoring local educational agency shall annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts: ...

(b) The sponsoring local educational agency shall transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15<sup>th</sup> of each month.”

There is no indication in the record that transferring property tax funds to charter schools constitutes “supervisory oversight.” Rather, this is an administrative function that districts or county offices of education perform in addition to their oversight responsibilities. Thus, the

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<sup>90</sup> Office of the Legislative Analyst, “Assessing California’s Charter Schools” (January 2004); See <[http://www.lao.ca.gov/2004/charter\\_schools/012004\\_charter\\_schools.htm](http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm)> [as of January 13, 2006].

issue is whether a local educational agency that operates under the ‘administrative’ fee authority of section 47613, subdivision (c) would be eligible for reimbursement. This subdivision reads:

(c) A local agency that is given the responsibility for supervisory oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the actual costs of supervisory oversight, **and administrative costs necessary to secure charter school funding**. A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b). [Emphasis added.]

The ‘local agency given the responsibility’ is described in section 47605, subdivision (k)(1) as follows:

The State Board of Education [SBE] may, by mutual agreement, designate its supervisory and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

Reading section 47613, subdivision (c), together with section 47605, subdivision (k)(1), it is clear that in order to impose the administrative fee authority of section 47613, subdivision (c), the ‘local agency’ must (1) be given responsibility for supervisory oversight by SBE; (2) obtain that responsibility by ‘mutual agreement;’ and (3) have a charter school approved by SBE (originally denied by a school district).

The fee authority given these ‘local agencies’ under section 47613, subdivision (c) is for “administrative costs necessary to secure charter school funding.” Transferring funds in lieu of property taxes to a charter school is a cost within the scope of those necessary to secure charter school funding. Therefore, a local agency<sup>91</sup> that has fee authority under section 47613, subdivision (c), has fee authority under Government Code section 17556, subdivision (d) and is therefore not eligible for reimbursement for activities under section 47635 (added by Stats. 1999, ch. 78).

Other local educational agencies that impose fee authority under section 47613, subdivisions (a) or (b), do so for purposes of ‘supervisory oversight’ and do not have fee authority for administrative costs necessary to secure charter school funding. And “A charter school that is charged for costs under this subdivision [(c)] may not be charged pursuant to subdivision (a) or (b).”<sup>92</sup> Therefore, except for local agencies under section 47613, subdivision (c), and section 47605, subdivision (k)(1), the Commission finds that section 47635, (added by Stats. 1999,

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<sup>91</sup> One of the definitions of “Sponsoring local educational agency” in the charter school fiscal statutes is: “In cases where a charter is granted by the State Board of Education after having been previously denied by a local educational agency, ... the local educational agency designated by the State Board of Education pursuant to paragraph (1) of subdivision (k) of Section 47605 or if a local educational agency is not designated, the local educational agency that initially denied the charter petition.” (Ed. Code, § 47632, subd. (i)(3)).

<sup>92</sup> Education Code section 47613, subdivision (c).

ch. 78), imposes costs mandated by the state and that Government Code section 17556, subdivision (d) does not apply.

**Financial information:** In a letter to school districts and county offices of education from CDE dated May 22, 2000, CDE states:

Because the LEA [local educational agency] is responsible for reporting all of its revenues and expenditures the LEA must include the revenues and expenditures generated by the charter school in the LEA's annual statement. [The letter goes on to specify the reporting format.]

As noted above, including this information in the district's annual statement was required only between May 22, 2000 and June 30, 2001, due to superseding CDE correspondence.<sup>93</sup>

The Commission finds that the original fee authority of section 47613 does not apply to including revenues and expenditures generated by the charter school in the school district's or county office of education's annual statement to CDE, in a format specified by CDE.

The fee authority does not extend to this report because, for the period CDE required it (from May 22, 2000 to June 30, 2001), including charter schools in the annual statement did not constitute 'supervisory oversight' of the charter school. Rather, it is a report submitted to the state pursuant to the CDE letter.<sup>94</sup> Therefore, the Commission finds that the fee authority of Government Code section 17556, subdivision (d) does not extend to school districts or county offices of education that operate under fee authority of section 47613, subdivisions (a) or (b).

In comments on the draft staff analysis, DOF states:

[T]he oversight fee authorized in Section 47613 offsets any costs associated with this activity on the part of a chartering authority, as nothing in current law suggests that reporting is not a normal part of oversight. In fact, current law (Section 42100, subdivision (b)) now requires charter schools to submit an annual statement of receipts and expenditures to a chartering authority for inclusion in its annual report to the state.

DOF goes on to discuss other subsequently enacted statutes (Ed Code, §§ 47604.32 & 47604.33) that require the charter school to submit financial reports to the school district, with costs to be covered by the fee authority of section 47613.

DOF correctly reads the current charter school financial reporting statutes. Sections 42100 and 1628 were amended by Statutes 2002, chapter 1058, to require charter school financial reporting to school districts, and to CDE through county offices of education. The following year, sections

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<sup>93</sup> See <<http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp>> as of January 20, 2006. Because no test claim has been filed on it, the Commission makes no finding on this April 5, 2004 CDE letter or the statutes cited in it.

<sup>94</sup> As to county offices of education only, the activity of charter school financial reporting to the state was codified effective January 1, 2003 (Stats. 2002, ch. 1058) as an amendment to section 1628. School districts are not required to forward the charter school information to CDE (§ 42100, subd. (b)), only to the county office of education. The Commission makes no findings on these statutes because no test claim has been filed on them.

47604.32 and 47604.33 were enacted (Stats. 2003, ch. 892) to make that reporting activity, among others, subject to the ‘supervisory fee’ authority of section 47613.

DOF’s citations to these statutes, however, are not relevant because they were enacted two to three years after the CDE letter.<sup>95</sup> Subsequent legislative declarations are not binding as to the intent of the Legislature that enacted an earlier statute,<sup>96</sup> and especially not binding as to the intent of CDE’s letter (as the letter is an “executive order”<sup>97</sup> and not a statute). And nothing in the legislative history of Education Code sections 47604.32 and 47604.33 (Stats. 2003, ch. 892) indicates the Legislature was clarifying a preexisting law or CDE requirement (which was not a requirement after June 30, 2001 anyway, as explained above). Rather, the 2003 statutes were enacted based on a November 2002 report of the Bureau of State Audits that recommended oversight of charter schools by chartering entities.<sup>98</sup>

Similarly, nothing in the legislative history of the 2002 amendments (Ed. Code, §§ 42100 & 1628) indicates that the fee authority applied to charter school financial reporting, even though the fee authority had existed since 1998, and even though the legislature recognized the potential for state mandated costs.<sup>99</sup> It is a rule of statutory construction that the Legislature is deemed to be aware of statutes in existence when enacting or amending new statutes, and that they were enacted or amended in light thereof.<sup>100</sup> The fee authority in section 47613 had existed for four years when Statutes 2002, chapter 1058 was enacted, so had the Legislature intended the fee to apply, it would have so indicated in chapter 1058’s amendment or legislative history. Thus, there is no evidence in the record that the fee authority of section 47613 “for supervisory oversight” applied to charter school reporting of revenues and expenditures prior to Statutes 2003, chapter 892 (Ed. Code, §§ 47604.32 & 47604.33).

Therefore, for the reasons discussed above, the Commission finds that the fee authority provision in Government Code section 17556, subdivision (d) does not preclude reimbursement for a school district or county office of education to include the revenues and expenditures generated by the charter school in the school district’s or county office of education’s annual statement, between May 22, 2000 and June 30, 2001, in a format specified by CDE.

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<sup>95</sup> Section 42100 was enacted by Statutes 2002, chapter 1058; sections 47604.32 & 47604.33 were enacted by Statutes 2003, chapter 892.

<sup>96</sup> *People v. Cruz* (1996) 13 Cal. 4th 764, 781.

<sup>97</sup> Government Code section 17516 defines executive order as “any order, plan, requirement, rule, or regulation issued by any of the following: (a) the Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government.”

<sup>98</sup> Assembly Floor Analysis, Analysis of Assembly Bill No. 1137 (2003-2004 Reg. Sess.) as amended September 4, 2003, page 3.

<sup>99</sup> Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Assembly Bill No. 1994 (2001-2002 Reg. Sess.) as amended August 28, 2002, pages 4-5.

<sup>100</sup> *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1096.

## Conclusion

The Commission finds as follows:

- Charter schools are not eligible claimants under article XIII B, section 6 and applicable statutes.
- The test claim statutes impose a reimbursable state-mandated program on school districts or county offices of education within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:
  - **Findings on denial:** Upon denial of a charter petition, a school district makes written findings of fact to support one or more of the following findings: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions, as specified in statute (§ 47605, subd. (b), amended by Stats. 1998, ch. 34).<sup>101</sup>
  - **Transfer funds in lieu of property taxes:** except for local educational agencies that charge fees under Education Code section 47613, subdivision (c), a school district or county office of education that sponsors a charter school and transfers funds in lieu of property taxes to the charter school (§ 47635, added by Stats. 1999, ch. 78).
  - **Financial information:** for school districts or county offices of education that are chartering authorities, including the revenues and expenditures generated by the charter school in the in the school district's or county office of education's annual statement, in a CDE-specified format. This activity is only reimbursable from May 22, 2000 until June 30, 2001.

The Commission also finds that, except for statutes over which the Commission lacks jurisdiction because they were decided in a prior test claim, all other test claim statutes and executive orders pled by the claimants do not contain a reimbursable state-mandated program.

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<sup>101</sup> This activity does not apply to a county office of education.