

**ITEM 3**

**MANDATE REDETERMINATION  
SECOND HEARING: NEW TEST CLAIM DECISION**

**PROPOSED DECISION**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);  
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:

Proposition 42, Primary Election, June 3, 2014

*California Public Records Act (02-TC-10 and 02-TC-51)*

14-MR-02

Department of Finance, Requester

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DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR  
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 15, 2015

**RECEIVED**  
January 21, 2015  
**Commission on  
State Mandates**

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

Dear Ms. Halsey:

Pursuant to Government Code section 17557, subdivision (d)(2)(A), the Department of Finance requests that the Commission on State Mandates (Commission) adopt a new test claim decision and amend the parameters and guidelines (Ps&Gs) for the California Public Records Act (02-TC-10 and 02-TC-51) mandate by adding language to show that the reimbursement period of this mandate program ended on June 3, 2014. California Proposition 42, the California Compliance of Local Agencies with Public Act (Senate Constitutional Amendment 3), was on the June 3, 2014 ballot in California as a legislatively-referred constitutional amendment, where it was approved. The measure required all local governments and agencies to comply with the California Public Records Act (CPRA) and the Ralph M. Brown Act (Brown Act) and with any subsequent changes to the acts, thus guaranteeing a person's right to inspect public records and attend public meetings.

Proposition 42 amended Section 3 of Article I and Section 6 of Article XIII B of the California Constitution and eliminated the requirements that the State of California reimburse local government agencies for compliance with these laws. Since the ballot was approved, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution. As a result, the California Public Records Act mandate program no longer exists based on the constitutional amendment.

The CSM form "Request to Adopt New Test Claim Decision" is attached with a detailed analysis, declarations and documentation.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

*Ro*  
TOM DYER  
Assistant Program Budget Manager

Enclosure



Enclosure A

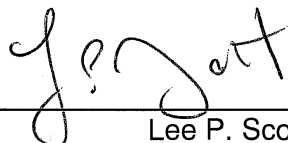
DECLARATION OF LEE P. SCOTT  
DEPARTMENT OF FINANCE  
CLAIM NO. 02-TC-10 and 02-TC-51

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

1/15/2015

at Sacramento, CA



Lee P. Scott

ICC: DYER, BYRNE, SCOTT, FEREBEE, GEANACOU, FILE

**1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION**

California Public Records Act (02-TC-10 and 02-TC-51)

**2. REQUESTER INFORMATION**

Name of Local Agency, School District, Statewide Association of Local Agencies or School Districts, or State Agency

California Department of Finance

Requester Contact

Michael Byrne

Title

Principal Program Budget Analyst

Organization

Department of Finance

Street Address

915 L Street

City, State, Zip Code

Sacramento, CA 95814

Telephone Number

916-445-3274

Fax Number

916-449-5252

E-Mail Address

**3. REPRESENTATIVE INFORMATION**

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if designating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address

For CSM Use Only
Filing Date: <b>RECEIVED</b> January 21, 2015 Commission on State Mandates
REQUEST# <b>14-MR-02</b>

**4. IDENTIFYING INFORMATION**

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability. Regarding the subsequent change in law, please identify all relevant code sections (include statutes, chapters, and bill numbers), regulations (include register number and effective date), executive orders (include effective date), cases, or ballot measures.

On May 26, 2011, the Commission on State Mandates adopted the Statement of Decision for the California Public Records Act (02-TC-10 and 02-TC-51) and approved reimbursement for specified activities mandated by Chapter 463, Statutes of 1992; Chapter 982, Statutes of 2000; and Chapter 355, Statutes 20 under Government Codes 6253, 6253.1, 6253.9, 6254.3, and 6255. On April 19, 2013 the Commission on State Mandates adopted Parameters and Guidelines. These Parameters and Guidelines provide reimbursable activity detail.

On June 3, 2014, California voters approved Proposition 42 which substantively amended various sections of the Government code that had served as a basis for the Commission's Statement of Decision. Based on the passage of Prop. 42, the state's obligation to provide reimbursement for this mandate has ceased pursuant to GC sections 17570 and 17556 (f).

Sections 5, 6 and 7 are attached as follows:

- 5. Detailed Analysis: Pages 1 to 1.
- 6. Declarations: Pages 2 to 6.
- 7. Documentation: Pages 7 to A-C

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

## 5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

- A. Identification of all of the following if relevant:
1. Dedicated state funds appropriated for the program.
  2. Dedicated federal funds appropriated for the program.
  3. Fee authority to offset the costs of the program.
  4. Federal law.
  5. Court decisions.
  6. State or local ballot measures and corresponding date of election.

## 6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

- A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
- B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.
- C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.
- D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.
- E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

## 7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

- A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.

**8. CERTIFICATION**

*Read, sign, and date this section and insert at the end of the request for a new test claim decision.\**

*This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.*

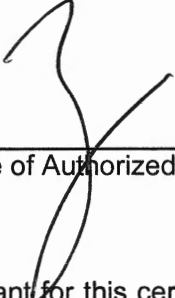
**Michael Byrne**

\_\_\_\_\_  
Print or Type Name of Authorized Official

**Principal Program Budget Analyst**

\_\_\_\_\_  
Print or Type Title

\_\_\_\_\_  
Signature of Authorized Official



\_\_\_\_\_  
Date 1/15/2015

\*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.

**Request to Adopt a New Test Claim Decision**  
**Department of Finance**  
**California Public Records Act**  
**Section 5: Detailed Analysis**

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Summary of Mandate

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state mandated program upon local agencies and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On June 3, 2014, California voters approved Proposition 42 (Prop 42) which substantively amended sections of the Government Code relative to the CPRA mandate.

Government Code section 17570 sets forth a process for adopting a new test claim decision based on a subsequent change in law. Section 17570 defines a subsequent change in law as a change in law that requires a finding that an incurred cost is a cost mandated by the state (Government Code section 17514) or is not a cost mandated by the state (Government Code section 17556).

Proposition 42, the California Compliance of Local Agencies with Public Act (Senate Constitutional Amendment 3), was on the June 3, 2014, ballot in California as a legislatively-referred constitutional amendment, where it was approved by the voters. The measure required all local governments and agencies to comply with the CPRA and the Ralph M. Brown Act (Brown Act) and with any subsequent changes to the acts, thus requiring the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. The CPRA provides that public records are open to inspection at all times during the office hours of state or local agencies that retain those records and that every person has a right to inspect any public record. The Act also required agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.

Proposition 42 amended Section 3 of Article I and Section 6 (a)(4) of Article XIII B of the California Constitution and specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance with these laws. Since the ballot measure was approved, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution. As a result, the California Public Records Act mandate program no longer exists based on the constitutional amendment (see attachments A, B and C).

The enactment of Prop 42 constituted a "subsequent change in law", as defined in Government Code section 17570, because the voters determined that this mandate is no longer subject to subvention requirements of Article XIII B, Section 6. Therefore, the state's obligation to reimburse affected local agencies has ceased.

The following Government Code Sections no longer create require a new level of service and create reimbursable activities per California Proposition 42 (see attachments A, B and C):

- Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
- Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)



**Request to Adopt a New Test Claim Decision**  
**Department of Finance**  
**California Public Records Act**  
**6: Declarations**

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The following is a list of the activities that are no longer reimbursable:

**Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

**A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

**B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:

**Request to Adopt a New Test Claim Decision**  
**Department of Finance**  
**California Public Records Act**  
**6: Declarations**

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a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
- 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
- 3) Sending or transmitting the notice to the requestor. b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
- 3) Sending or transmitting the notice to the requestor. c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

**Request to Adopt a New Test Claim Decision**  
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**California Public Records Act**  
**6: Declarations**

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This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement: a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

**Request to Adopt a New Test Claim Decision**  
**Department of Finance**  
**California Public Records Act**  
**6: Declarations**

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**Enclosure**

According to the Controller's April 30, 2014, "State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)", Counties, Cities or Special Districts have a payable net balance of \$9,181,522. The Commission on State Mandates adopted a Statewide Cost Estimate on May 30, 2014 and included a state wide cost of \$9,674,284. Based on that data, the department of Finance included an estimate of \$9,674,284 General Fund in the 2015-16 Governor's Budget for the cost of the mandate. AS costs are paid two year in arrears, the estimate is to provide reimbursement for costs incurred in the 2013-14 fiscal year.

Based on the forgoing analysis, which provides substantiation that the reimbursable activities in the CPRA mandate cease to be eligible for reimbursement, the State's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero from June 3, 2014 and going forward. Proposition 42 amended Section 3 of Article I and Section 6 of Article XIII B of the California Constitution and eliminated the requirements that the State of CA reimburse local government agencies for compliance with these laws. Since the ballot was approved, no reimbursement is required pursuant to Article XIII B, section 6 of the California Constitution. As a result, the California Public Records Act mandate program no longer exists based on the constitutional amendment.

**Request to Adopt a New Test Claim Decision  
Department of Finance  
California Public Records Act  
6: Declarations**

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**Enclosure**

DECLARATION OF MICHAEL BYRNE  
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

1/15/2015  
at Sacramento, CA

  
\_\_\_\_\_  
Michael Byrne

**Request to Adopt a New Test Claim Decision  
California Public Records Act  
7: Documentation**

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**Attachments**

California Constitution, Article I, Section 3 .....	A
California Constitution, Article XIII b, Section 6 .....	B
Senate Constitutional Amendment No. 3 .....	C

icc: DYER, BYRNE. SCOTT, GEANACOU, FILE

CALIFORNIA CONSTITUTION  
ARTICLE 1 DECLARATION OF RIGHTS

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the



Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

CALIFORNIA CONSTITUTION  
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 6. (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.

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.

(b) (1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

2013 Cal. Legis. Serv. Res. Ch. 123 (S.C.A. 3) (WEST)

CALIFORNIA 2013 LEGISLATIVE SERVICE

2013 Portion of 2013-2014 Regular Session

Additions are indicated by Text; deletions by

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Vetoed are indicated by ~~Text~~;

stricken material by ~~Text~~.

Chapter 123

S.C.A. No. 3

CONSTITUTIONAL AMENDMENTS—PUBLIC INFORMATION—INSPECTION

[Filed with Secretary of State September 20, 2013.]

[Approved by the Voters as Prop. 42 on June 3, 2014.]

Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 3 of Article I and Section 6 of Article XIII B thereof, relating to public information.

LEGISLATIVE COUNSEL’S DIGEST

SCA 3, Leno. Public information.

The California Constitution provides that the people have the right of access to information concerning the conduct of the people’s business. The California Constitution requires that the meetings of public bodies and the writings of public officials and agencies be open to public scrutiny. The California Constitution requires that 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 the local government for the costs of the program or increased level of service. The California Constitution exempts certain mandates from the requirement to provide a subvention of funds including local agency compliance with the Ralph M. Brown Act (Brown Act).

The California Public Records Act (CPRA) provides that public records are open to inspection at all times during the office hours of the state or local agency that retains those records, and that every person has a right to inspect any public record, except as provided. The Brown Act requires each legislative body of a local agency to provide notice of the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public. Under the act, all persons are permitted to attend any meeting of the legislative body of a local agency, unless a closed session is authorized.

This measure would require each local agency to comply with the CPRA and the Brown Act, and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act which contains findings demonstrating that the statutory enactment furthers the purposes of the people’s right of access to information concerning the conduct of the people’s business. The measure would specifically exempt mandates contained within the scope of those acts, and certain subsequent statutory enactments that contain findings demonstrating that the statutory enactment furthers those same purposes, from the requirement to provide a subvention of funds.

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 2013–14 Regular Session commencing on the third day of December 2012, two-thirds of the membership of each house concurring, hereby

proposes to the people of the State of California, that the Constitution of the State be amended as follows:

First—That Section 3 of Article I thereof is amended to read:

<< CA CONSTA Art. 1, § 3 >>

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b)(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

Second—That Section 6 of Article XIII B thereof is amended to read:

<< CA CONSTA Art. 13B, § 6 >>

SEC. 6. (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.
  - (4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.
- (b)(1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.
- (2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.
- (3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.
- (4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.
- (5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.
- (c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259

Statutes 1975, Chapters 678 and 1246;  
Statutes 1977, Chapter 556;  
Statutes 1980, Chapter 535;  
Statutes 1982, Chapter 163;  
Statutes 1984, Chapters 802 and 1657;  
Statutes 1985, Chapter 1053;  
Statutes 1990, Chapter 908;  
Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073

Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51)

By County of Los Angeles and Riverside Unified School District, Claimants.

Case No.: 02-TC-10 and 02-TC-51

*California Public Records Act*

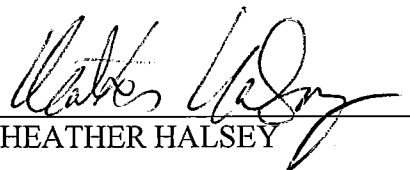
STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT CODE  
SECTION 17500 ET SEQ.; TITLE 2,  
CALIFORNIA CODE OF  
REGULATIONS, DIVISION 2,  
CHAPTER 2.5. ARTICLE 7

(Adopted May 26, 2011,  
Corrected December 17, 2012)  
(Served December 17, 2012)

**NOTICE OF CORRECTED STATEMENT OF DECISION**

The attached is a corrected statement of decision prepared in accordance with Title 2, California Code of Regulations section 1188.2(b). The corrections made to the statement of decision correct the following clerical errors:

The statement of decision expressly states that Government Code section 6254.3 only applies to "state employees, school districts and county offices of education." However, the statement of decision inadvertently used "K-14 district" instead of "K-12 school district" when further addressing Government Code section 6254.3. As a result, "K-14 district" is replaced with "K-12 school district" on pages 3, 4, 5, 18, 19, and 28 of the corrected statement of decision.

  
HEATHER HALSEY

12/17/12  
Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259

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

*(Adopted on May 26, 2011,  
Corrected on December 17, 2012)*

**STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. Keith Petersen appeared on behalf of Riverside Unified School District. Leonard Kaye and Lieutenant Judy Gerhardt appeared on behalf of Los Angeles County and Los Angeles County Sheriff’s Department. Donna Ferebee appeared on behalf of the Department of Finance.

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 the staff analysis at the hearing by a vote of 6-0 to partially approve this test claim.

**Summary of Findings**

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14

districts), and county offices of education. These activities include: (1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

In 2004, California voters approved Proposition 59, to incorporate the right of public access to information contained in the CPRA and other open meetings and public records laws, into the California Constitution.

The Commission makes the following findings regarding the test claim statutes:

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6253 sets forth the right of every person to inspect any public record with exceptions, and the duties of public agencies that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Some of the activities imposed by sections 6253 and 6253.9 are not new activities. However, sections 6253 and 6253.9 do impose state-mandated new programs or higher levels of service on local agencies and K-14 districts.

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. Section 6253.1 imposes a state-mandated new program or higher level of service on local agencies and K-14 districts.

Initiative, referendum, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection.

Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The plain language of section 6253.5 does not impose any activities on K-14 districts. In addition, K-14 districts are not required to seek permission to examine the documents addressed in section 6253.5, and as a result, section 6253.5 does not impose a state-mandated new program or higher level of service.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection.



Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Section 6254.3 imposes a state-mandated new program or higher level of service on K-12 school districts and county offices of education to remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee.

#### Justification for withholding of records (Gov. Code, § 6255)

Section 6255 requires local agencies and K-14 districts to provide a justification for withholding records for which a public records request was made, but providing a justification for withholding records is not a new requirement.

Section 6255 imposes a state-mandated new program or higher level of service to respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part.

#### Court costs and attorney fees (Gov. Code § 6259)

Section 6259 addresses the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Section 6259 requires the court to award court costs and attorney fees to a plaintiff that prevails in litigation alleging the improper withholding of public records by a public agency.

The payment of court costs and attorney fees is not a service to the public. Instead it is a consequence for failing to provide a service to the public when required by law, and as a result, does not constitute a program within the meaning of article XIII B, section 6 of the California Constitution.

Also, the language of section 6259 does not require local agencies or K-14 districts to engage in litigation. Even if the requirement were read into section 6259, section 6259 has not changed, as relevant to this discussion, since 1968. As a result, engaging in litigation is not a state-mandated new program or higher level of service imposed by section 6259.

#### Costs mandated by the state

Government Code section 17556, subdivision (f), prohibits the Commission from finding costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election. In addition, Government Code section 17556, subdivision (d), prohibits the Commission from finding costs mandated by the state where a 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.

Neither subdivision (f) or (d), preclude the Commission from finding costs mandated by the state because there is no evidence in the law or in the record that the state-mandated activities are necessary to implement Proposition 59, and there is insufficient fee authority to cover the costs of all state-mandated activities. The fee authority applies only to the direct costs of providing an electronic copy to a person pursuant to Government Code section 6254.3, or the direct cost plus the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an

electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable. However, the fee authority provided by the CPRA constitutes offsetting revenue that will be identified in the parameters and guidelines.

For the reasons discussed above, the Commission finds that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
  - a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
  - b. describe the information technology and physical location in which the records exist; and
  - c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)
7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

## **BACKGROUND**

This test claim addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides individuals in California access to information concerning the conduct of the people's business. Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a "hodgepodge of statutes and court decisions."<sup>1</sup> The CPRA was adopted in order to more clearly define what constitutes a "public record" open to inspection and what information can be or is required to be withheld from disclosure. Since the 1968 adoption of the CPRA there have been numerous amendments to the CPRA; some of these amendments are the subject of this test claim.

On October 15, 2002 the County of Los Angeles filed the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim seeking reimbursement for costs associated with the procedures used by counties for responding to public records requests. The County of Los Angeles alleges reimbursable costs for activities such as: (1) assisting members of the

<sup>1</sup> *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765.

public to identify records and information that are responsive to the request or the purpose of the request; (2) estimate a date and time when the disclosable records will be made available; (3) respond in writing to a written request for inspection or copies of public records when the request is denied in whole or in part; (3) make information that constitutes an identifiable public record kept in electronic format available in the electronic format which it is held; and (4) include as a writing that can constitute a “public record” any photocopy, transmission by electronic mail or facsimile, and any record thereby created, regardless of the manner in which the record has been stored.<sup>2</sup>

On June 26, 2003, Riverside Unified School District filed the *California Public Records Act* (02-TC-51) test claim, which similarly seeks reimbursement for costs associated with complying with the CPRA. Riverside Unified School District alleges reimbursable state-mandated costs for K-14 districts and county offices of education to engage in activities including: (1) providing redacted copies of requested documents deleting portions exempted by law; (2) providing copies of public records to the public, including the determination and collection of the fee; (3) promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable records; and (4) removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by that employee.<sup>3</sup>

In 2004, California voters approved Proposition 59, which amended article I, section 3 of the California Constitution to include the right of public access to writings of government officials. In light of Proposition 59, it was determined that the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim would require consideration of Government Code section 17556, subdivision (f), which provided that the Commission shall not find costs mandated by the state if the Commission finds:

The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.<sup>4</sup>

However, on March 13, 2007, Government Code section 17556, subdivision (f), was found unconstitutional by the superior court in *California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al.* [No. 06CS01335]. The court’s judgment enjoined the Commission from taking any action to implement Government Code section 17556, subdivision (f). This decision was appealed, and as a result, on August 2, 2007 the test claims were removed from the Commission’s hearing calendar until a final court decision in *California School Boards Association, et al. v. Commission on State Mandates, et al.*

On March 9, 2009, the Court of Appeal found Government Code section 17556, subdivision (f), constitutional except for the language “reasonably within the scope of.” As a result of the

<sup>2</sup> 02-TC-10 test claim, *supra*, pgs. 1-9.

<sup>3</sup> 02-TC-51 test claim, *supra*, pgs. 26-28.

<sup>4</sup> Government Code section 17556, subdivision (f), as amended by Statutes 2006, chapter 538.

court's decision, Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if the Commission finds:

The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.<sup>5</sup>

On November 2, 2010 the Commission consolidated the *California Public Records Act: Disclosure Procedures* (02-TC-10) and *California Public Records Act (K-14)* (02-TC-51) test claims to form the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim.

### **A. Claimants' Position**

The claimants allege that the test claim statutes impose reimbursable state-mandated activities. Activities which are alleged to have resulted in reimbursable costs include: assisting members of the public in making an effective public records request, disclosing records in an electronic format, redacting information exempt from disclosure, limiting disclosure of K-14 district employees' home address and telephone numbers, removing a K-14 district employee's home address and telephone numbers when requested by the employee, and paying attorney fees to a prevailing plaintiff that brought suit against a K-14 district for improperly withholding public records.<sup>6</sup>

On March 25, 2004, the California Community Colleges Chancellor's Office (Chancellor's Office) indicated that it would defer to the analysis of the Department of Finance (Finance) regarding the test claim, because the CPRA applies equally to all government entities, and as a result, there is nothing unique to the college districts that requires a response from the Chancellor's Office. Interpreting this as a comment that districts are not entitled to reimbursement, the school district claimant, Riverside Unified School District, argues that the Chancellor's Office comments must be disregarded. The claimant states:

The comment that the statute in question applies equally to all government entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code section 17556. Therefore, it must be disregarded.

If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. [¶] . . . [A] law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.<sup>7</sup>

On January 18, 2011 the County of Los Angeles submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated

<sup>5</sup> Government Code section 17556, subdivision (f), as amended by Statutes 2010, chapter 719.

<sup>6</sup> 02-TC-10 Test Claim, *supra*, 02-TC-51 Test Claim Filing, *supra*.

<sup>7</sup> Claimant response to the Chancellor's Office Comments, dated April 30, 2004.

*California Public Records Act* (02-TC-10 and 02-TC-25) test claim. The County of Los Angeles argues:

[T]he public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the . . . declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.

Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs . . .<sup>8</sup> (Original underline.)

On April 18, 2011 both claimants submitted comments in response to the draft staff analysis, which will be addressed in the discussion below.<sup>9</sup>

#### **B. Department of Finance's Position (Finance)**

On November 20, 2002, Finance submitted comments in response to the unconsolidated *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim. Finance found that a portion of the test claim may be a state mandate. Finance states:

The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or [*sic*] researching requests would not be considered state-mandated activities, and additional activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable.<sup>10</sup>

On January 14, 2011, Finance submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim. Finance argues that the Commission should find that there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59.

On April 19, 2011, Finance submitted comments in response to the draft staff analysis, which echo the arguments made in Finance's January 14, 2011 comments.<sup>11</sup>

#### **C. Chancellor's Office Position**

<sup>8</sup> Claimant comments in response to request for comments, dated January 18, 2011.

<sup>9</sup> Claimants' responses to draft staff analysis, *supra*.

<sup>10</sup> Finance comments on 02-TC-10, *supra*.

<sup>11</sup> Finance comments on draft staff analysis, *supra*.

On March 25, 2010, the Chancellor’s Office submitted comments in response to the unconsolidated *California Public Records Act (K-14)* (02-TC-51) test claim. The Chancellor’s Office states in relevant part:

The Chancellor’s Office chooses not to respond to this test claim. We don’t have anything to add to this issue, because the statute in question applies equally to all government entities and there’s nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.<sup>12</sup>

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>13</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>14</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>15</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>16</sup> In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.<sup>17</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

<sup>12</sup> Chancellor’s Office comments on 02-TC-51 test claim, dated March 25, 2004.

<sup>13</sup> California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “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>14</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th727, 735 (*Kern High School Dist.*).

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

<sup>16</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>17</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>18</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>19</sup> A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”<sup>20</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>21</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>22</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>23</sup>

#### **A. Some of the test claim statutes impose state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution**

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the header impose state-mandated new programs or higher levels of service.

##### Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6252 sets forth the definitions of terms used in the CPRA. Section 6253 sets forth the right of every person to inspect any public record, with exceptions, and the duties of public agencies, state and local, and K-14 districts that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language

<sup>18</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 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>19</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>20</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

<sup>21</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>22</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>23</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.



governs.<sup>24</sup> The plain language of Government Code sections 6253 and 6253.9 require local agencies and K-14 districts to engage in the following activities:

1. Make public records open to inspection at all times during the office hours of the local agency or K-14 district, by every person, except for public records exempted from disclosure or prohibited from disclosure. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982); and Gov. Code, § 6253.9, subd. (a)(1) (Stats. 2000, ch. 982).)
2. Make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982).)
3. Provide a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record or records. (Gov. Code, § 6253, subd. (b) (Stats. 2001, ch. 982).)
4. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
5. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
6. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district, due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

The Commission finds that the above activities are mandated by the state.

In addition, the claimants argue that the provision of a copy of disclosable records pursuant to Government Code section 6253, subdivision (b), includes “the determination and collection of the fee” that local agencies and K-14 districts are authorized to charge for duplication of public records.<sup>25</sup> Subdivision (b) provides in relevant part:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon a payment of fees covering direct costs of duplication, or a statutory fee if applicable.

<sup>24</sup> *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

<sup>25</sup> 02-TC-51 test claim, *supra*, p. 26.

The claimants argue, “The unambiguous plain meaning of this Section is that collection of the fee is a condition precedent to providing the records, so it is a necessary activity to comply with the mandate to provide the records. Furthermore, to collect the fee, the amount must be determined.” However, the plain language of subdivision (b) does not require public agencies to determine or collect a fee. Instead, it speaks to the timing of the mandated activity of providing a copy of a public record. In addition, under Government Code section 6253, subdivision (e), which allows local agencies and K-14 districts to adopt requirements that provide greater access to records, local agencies and K-14 districts can waive fees, and thus, the collection and determination of a fee is not a necessary activity to comply with the mandate to provide public records.<sup>26</sup> As a result, the Commission finds that local agencies and K-14 districts are not mandated to determine or collect fees for the duplication of public records.

The Commission further finds that the above state-mandated activities carry out the governmental function of providing a service to the public by providing access to information regarding the business of the public, and as a result, constitute a program within the meaning of article XIII B, section 6 of the California Constitution. Although the above activities constitute “programs” it is necessary to determine whether they are new in comparison with the legal requirements in effect immediately before the enactment of the test claim legislation. The following discussion will address each activity in the order listed above.

Since 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure.<sup>27</sup> However, the claimants argue that “public records” that are required to be open for inspection did not include records made by “photocopying, transmitting by electronic mail or facsimile [or]. . . any record thereby created, regardless of the manner in which the record has been stored,” until the definition of “writing” as used in the CPRA was amended in 2002 to specifically include these methods of keeping information.<sup>28</sup> Thus, the claimants assert that publicly disclosing information kept in these formats is a new activity.

However, in 1970 the Legislature defined “public records” to include:

[A]ny writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency *regardless of physical form or characteristics.*<sup>29</sup> (Italics added.)

“Writing” as used in the CPRA was defined to include:

<sup>26</sup> *North County Parents Organization v. Dept. of Education* (4th. Dist. 1994) 23 Cal.App.4th 144, 148. The court, in discussing former Government Code section 6253.1 (currently Government Code section 6253, subdivision (e)) found that, “This section gives an agency power to ‘adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.’ The trial court apparently concluded that this provision permits an agency to waive or reduce its fees. We agree. A reduction in copy fee permits ‘greater access’ to records.”

<sup>27</sup> Former Government Code section 6253 (Stats. 1968, ch.1473).

<sup>28</sup> 02-TC-10 test claim, *supra*, p. 8, citing to Statutes, 2002, chapter 945.

<sup>29</sup> Former Government Code section 6252, subdivision (d).

[H]andwriting, typewriting, printing, photostating, photographing, and *every other means of recording upon any form of communication or representation*, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and *other documents*.<sup>30</sup> (Italics added.)

The above language indicates that the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process. To find otherwise would conflict with the purpose and focus of the CPRA, which is to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency.<sup>31</sup> This interpretation is consistent with the court's discussion of what constitutes a public record in *San Gabriel Tribune v. Superior Court*, which included in its discussion the following description by the Assembly Committee on Statewide Information Policy:

This definition [of what constitutes a public record] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.<sup>32</sup>

As a result, the Commission finds that making public records open to inspection by every person at all times during the office hours of the local agency and K-14 district does not constitute a new program or higher level of service regardless of the form which the public records are kept.

The claimants also argue that prior to 1981 state and local agencies and K-14 districts were not required to provide redacted copies of requested documents.<sup>33</sup> In 1981, the CPRA was specifically amended to provide, "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law."<sup>34</sup> However, this amendment only codified the interpretation of the CPRA accorded to it by case law. Prior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.<sup>35</sup> In 1979, after noting that the focus of the CPRA is information and not documents the court in *Nor. Cal. Police Practices Project v. Craig* concluded:

[W]here nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is

<sup>30</sup> Former Government Code section 6252, subdivision (e).

<sup>31</sup> *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

<sup>32</sup> *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774, citing to Volume 58 Opinions of the Attorney General 629, 633-634 (1975), which cites to Assembly Committee on Statewide Information Policy California Public Records Act of 1968 (1 Appendix to Journal of Assembly 7, Reg. Sess. (1970), See also AG opinion 53 Ops.Cal.Atty.Gen. 136, 140-143).

<sup>33</sup> 02-TC-51, *supra*, pgs. 11 and 26, citing to Statutes 1981, chapter 968.

<sup>34</sup> Former Government Code section 6257 (Stats. 1981, ch. 968).

<sup>35</sup> *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

required to serve the objective of the [CPRA] to make public records available for public inspection and copying unless a particular statute makes them exempt.<sup>36</sup>

As a result, the Commission finds that the general duty to make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law does not constitute a new program or higher level of service subject to articles XIII B, section 6 of the California Constitution.

In regard to providing copies or exact copies of public records upon a request that reasonably describes an identifiable record, public agencies have been required to engage in this activity since the 1968 enactment of the CPRA. Former Government Code sections 6256 and 6257 provided:

6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.

6257. A request for a copy of an identifiable public record or information produced therefrom, or certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.<sup>37</sup>

A “certified copy” is a duplicate of an original document, certified as an exact reproduction of the original.<sup>38</sup> Thus, since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records. As a result, the Commission finds that providing a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Although the Commission has found that making public records, including records in an electronic format, *open to inspection* at all times does not constitute a new program or higher level of service, *providing an electronic copy* of a public record kept in an electronic format does constitute a new program or higher level of service. Prior to 2000, public agencies were not required to provide the public with an *electronic* copy of a public record kept in an electronic format. Instead, public agencies were given discretion to provide “[c]omputer data . . . in a form determined by the agency.”<sup>39</sup> One of the purposes for enacting section 6253.9, and requiring public agencies to provide an electronic copy, was to substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated

<sup>36</sup> *Ibid.* This interpretation of the CPRA is retroactive to the initial enactment of the CPRA in 1968 as it involves no novel or unforeseeable judicial expansion of the statutory language in question. For retroactivity of judicial statutory interpretation see *County of San Diego v. State Bd. of Control* (1984) 161 Cal.App.3d 868, 870.

<sup>37</sup> Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

<sup>38</sup> Black’s Law Dictionary (Seventh Ed. 1999) p. 337.

<sup>39</sup> Former Government Code section 6253, subdivision (b) (Stats. 1998, ch. 620).

with large volumes of paper records.<sup>40</sup> In essence, the intent was to provide a higher level of the service of providing public records to the public. As a result, the Commission finds that the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

The claimants have pled the activities mandated by Government Code section 6253, subdivision (c), relating to providing a person making a public records request notice of the determination of whether records are disclosable and whether an extension is needed by the public agency to make a determination, as added in 1981.<sup>41</sup> Immediately prior to 1981, public agencies were not required to engage in these activities. As a result, the Commission finds that the activities mandated by Government Code section 6253 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In summary, the Commission finds the following activities constitute state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution.

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. The Commission finds that section 6253.1 mandates local agencies and K-14 districts to engage in the following activities:

<sup>40</sup> Assembly Committee on Governmental Organization, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000. See also, Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000.

<sup>41</sup> 02-TC-51 test claim, *supra*, pgs. 11 and 26-27. Statutes 1981, chapter 968.

When a member of the public requests to inspect a public record or obtain a copy of a public record:

- a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
- b. describe the information technology and physical location in which the records exist; and
- c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This duty is not triggered if: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subs. (a) and (d) (Stats. 2001, ch. 355).)

The claimants pled Government Code section 6253.1 as added in 2001.<sup>42</sup> Immediately before 2001, local agencies and K-14 districts were not required to engage in the activities mandated by section 6253.1. In addition, the above activities are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.<sup>43</sup> As a result, the Commission finds that the activities mandated by Government Code 6253.1 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Initiative, referenda, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The claimants assert that section 6253.5 requires K-14 districts to engage in the following activity:

[W]hen necessary, [examine] petitions for the district when petitions are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.<sup>44</sup>

However, section 6253.5 does not impose any requirements on K-14 districts. As described above, section 6253.5 prohibits disclosure of petitions, and provides exceptions to this

<sup>42</sup> Statutes 2001, chapter 355.

<sup>43</sup> Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

<sup>44</sup> 02-TC-51 test claim, *supra*, p. 28.

prohibition. One of the exceptions allows a K-14 district attorney to review a petition upon the approval of the appropriate superior court. This exception does not require K-14 districts to seek this approval. As a result, the Commission finds that Government Code section 6253.5 does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 only applies to state employees, school districts, and county offices of education. Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection. Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Specifically, section 6254.3 provides:

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Although, the language of subdivision (a) is prohibitory in nature, section 6254.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.<sup>45</sup> As discussed above, section 6253 of the CPRA requires the redaction of information that is

<sup>45</sup> *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

exempted or prohibited from disclosure from records that contain disclosable information. Section 6254.3 prohibits the disclosure of the home address and telephone number of employees of K-14 school districts and county offices of education. Thus, if a record that contains disclosable information also contains the addresses and telephone numbers of employees of K-14 school districts and county offices of education, the addresses and telephone numbers must be redacted from the record, except in the limited circumstances listed in section 6254.3, subdivisions (a)(1)-(4), in which K-12 school districts and county offices of education have the discretion to release this information.

Pursuant to the plain language of the statute read in light of the whole CPRA, the Commission finds that section 6254.3 requires K-12 school districts and county offices of education to engage in the following activities:

1. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

2. Remove the home address and telephone number of an employee from any mailing list maintained by the K-12 school district or county office of education if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

In order to determine whether the activity required by section 6254.3 constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.<sup>46</sup> Here, K-12 school districts and county offices of education are required to remove the home address and telephone number of an employee from *any* mailing list maintained by the K-12 school districts or county offices of education if requested by the employee. "Any mailing list" includes mailing lists that K-12 school districts and county offices of education are legally required to maintain and those voluntarily maintained by the K-12 school districts or county offices of education. In regard to mailing lists that K-12 school districts and county offices of education voluntarily maintain, the requirement to remove from the mailing list the home address and telephone number of an employee that requests the removal is triggered by the decision by K-12 school districts and county offices of education to voluntarily maintain a mailing list. As a result, the Commission

<sup>46</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.



finds in regard to voluntarily maintained mailing lists, the activity required by section 6254.3 is not a state-mandated activity. However, the Commission finds that the following requirements do constitute state-mandated activities:

1. For K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

2. For K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

The claimants have pled section 6254.3 as last amended in 1992.<sup>47</sup> Immediately prior to the 1992 amendment, section 6254.3 only applied to state employers and state employees.<sup>48</sup> In addition, although the general duty to redact information that is exempt or prohibited from disclosure existed prior to the adoption of section 6254.3, the specific duty to redact the home address and telephone number of an employee of a K-12 school district or county office of education did not exist. Thus, the scope of what must be withheld from disclosure, and as a result, redacted from records containing disclosable information increased. As a result, the state-mandated activities imposed by section 6254.3 are new.

In addition, these mandates impose requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business while being mindful of the right of individuals to privacy.<sup>49</sup> As a result, the Commission finds

<sup>47</sup> Statutes 1992, chapter 463.

<sup>48</sup> Government Code section 6254.3 as added by Statutes 1984, chapter 1657.

<sup>49</sup> Government Code section 6250, which states, "In enacting [the CPRA], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

that Government Code section 6254.3 imposes state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution:

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 addresses the provision of a justification for withholding records for which a public records request was made. The Commission finds that section 6255 mandates local agencies and K-14 districts to engage in the following activities:

1. Justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)
2. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b).)

The claimants pled section 6255 as last amended in 2000.<sup>50</sup> Since 1968, section 6255 required the justification of withholding records by demonstrating that the record in question is exempt or that the public interest served by not disclosing the record outweighs the public interest served by disclosing the record. As a result, that state-mandated activity does not constitute a new program or higher level of service.

However, immediately prior to the amendment of section 6255 in 2000, districts were not required to respond to written requests *in writing* that includes a determination that the request is denied. In addition, this mandate imposes requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.<sup>51</sup> As a result, the Commission finds that Government Code section 6255, subdivision (b), imposes the following state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

Court costs and attorney fees (Gov. Code § 6259)

In 1968 Government Code section 6259 was enacted as part of the CPRA.<sup>52</sup> Since its original enactment in 1968, section 6259 has addressed the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Specifically, since 1968 the court has been required to order the officer or person charged with withholding the requested records to disclose the public record or show cause why he or she should not disclose the

<sup>50</sup> Statutes 2000, chapter 982.

<sup>51</sup> Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

<sup>52</sup> Statutes 1968, chapter 1473.

record.<sup>53</sup> If the court determines that the public official was not justified in refusing to disclose the record, the court is required to order the public official to make the record public.<sup>54</sup>

In 1975, section 6259 was amended to add the provisions that a court is required to award court costs and reasonable attorney fees to the plaintiff if public records are disclosed as a result of the plaintiff filing suit.<sup>55</sup> In addition, if the court finds that the plaintiff's case is clearly frivolous, the court is required to award court costs and reasonable attorney fees to the public agency.<sup>56</sup> In 1984 section 6259 was amended to add the procedure for appealing a decision by a court.<sup>57</sup>

The K-14 district claimant argues that section 6259 imposes the following reimbursable state-mandated new program or higher level of service:

[W]hen ordered by a court, [pay] to a prevailing plaintiff his or her court costs and reasonable attorney fees.<sup>58</sup>

Thus, the K-14 district claimant alleges that payment of court costs and reasonable attorney fees is a reimbursable state-mandated new program or higher level of service. However, the payment of court costs and reasonable attorney fees is not a program or service provided to the public. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making disclosable public records open for inspection by the public or providing copies of the disclosable public records to the public.

The K-14 district claimant disagrees with this characterization and argue that the "court's determination is not a finding of a failure to implement the mandate to disclose or not to disclose the records, but instead, it is a conclusion as to whether the justification for the action was reasonable."<sup>59</sup> However, if a court finds that a local agency or K-14 district was unjustified in its

<sup>53</sup> Former Government Code section 6259, as amended by Statutes 1968, chapter 1473. Currently Government Code section 6259, subdivision (a), as amended by Statutes 1993, chapter 926.

<sup>54</sup> Former Government Code section 6259, as amended by Statutes 1968, chapter 1473. Currently Government Code section 6259, subdivision (b), as amended by Statutes 1993, chapter 926.

<sup>55</sup> Former Government Code section 6259, as amended by Statutes 1975, chapter 1246. Currently, Government Code section 6259, subdivision (d), as amended by Statutes 1993, chapter 926. See also, *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1390-1391, in which the court defines "prevail," as used in Government Code section 6259, as a situation when the plaintiff files an action which results in the defendant releasing a copy of a previously withheld document. The court further finds that an action results in the release of previously withheld document if the lawsuit motivated the defendants to produce the documents.

<sup>56</sup> *Ibid.*

<sup>57</sup> Government Code section 6259, subdivision (c).

<sup>58</sup> 02-TC-51 test claim, *supra*, p. 28.

<sup>59</sup> Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, p. 4-5.

decision not to disclose a public record, and thus failed to disclose public records as mandated by the CPRA, the consequence is the payment of court costs and attorney fees. Thus, the Commission finds that payment of court costs and attorney fees pursuant to Government Code section 6259 is not a state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.<sup>60</sup>

In response to the draft staff analysis, the K-14 district claimant expands its allegation to provide that the various duties resulting from the CPRA (including those stemming from a statute that was not pled in this test claim), in conjunction with section 6259, mandate *litigation as a whole*, as opposed to only paying court costs and reasonable attorney fees pursuant to section 6259 as pled in the test claim.<sup>61</sup> Similarly, the county claimant expands its allegations to provide that litigation costs, including possible court costs and attorney fees, are reimbursable state-mandated costs.<sup>62</sup>

The claimants' responses to the draft staff analysis do not allege that Government Code section 6259 specifically requires local agencies or K-14 districts to engage in litigation. Rather, the claimants' responses provide that local agencies and K-14 districts are generally required to disclose public records by section 6253, local agencies and K-14 districts have an affirmative duty not to disclose information described in section 6254 (which was not pled), local agencies and K-14 districts are required to provide a written justification of why a public record is withheld pursuant to section 6255, that nondisclosure of a public record and justifications provided pursuant to sections 6254 and 6255 are heavily litigated, and section 6259 requires a court to award court costs and attorney fees to a plaintiff if a local agency or K-14 district unjustifiably refused to disclose a public record.<sup>63</sup> From this the claimants argue:

The litigation costs incurred by the public agency are a necessary and reasonable consequence of its statutory duty to comply with Sections 62253 [*sic*], 6254, and 6255. Therefore, to the extent that the subject matter of the litigation pertains to information not to be disclosed pursuant to legislation enacted after December 31, 1974, the cost and fees incurred by the public agency to respond to

<sup>60</sup> The County of Los Angeles argues in its response to the draft staff analysis that attorney costs associated with any legal analyses needed to determine whether to release a public record is a reimbursable state-mandated cost (See Claimant (County of Los Angeles) response to draft staff analysis, dated April 18, 2011, pgs. 4-6). However, the findings made in this section of the analysis *only* address court costs and attorney fees as awarded by a court pursuant to Government Code section 6259. They do not address attorney costs associated with any state-mandated new program or higher level of service found to be imposed by the CPRA in this test claim.

<sup>61</sup> Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5. In the claimant's response, the claimant cites to Government Code section 6254, which was not pled in this test claim, as being a source of the requirement to engage in litigation.

<sup>62</sup> Claimant (County of Los Angeles) response to draft staff analysis, *supra*, pgs. 4-6.

<sup>63</sup> Claimant (Riverside Unified School District) response to draft staff analysis, *supra*, pgs. 4-5. Claimant (County of Los Angeles) response to draft staff analysis, *supra*, pgs. 4-6.

the writ and the court are reimbursable, as well as any award assessed against the public agency.<sup>64</sup>

Pursuant to the claimants' argument Government Code section 6254 is part of the basis upon which the activity of engaging in litigation arises from. As a result, the Commission would be required to make specific findings on section 6254. However, the claimants have not pled section 6254, and thus, the Commission does not have jurisdiction to make any findings on section 6254.<sup>65</sup>

In regard to Government Code sections 6255 and 6259, these sections, read together or separately, do not require local agencies and K-14 districts to engage in litigation. Instead, as described above, section 6255 requires local agencies and K-14 districts to provide a justification of why a public record is being withheld, and section 6259 sets forth the duties of a court when a lawsuit is brought under the CPRA. In addition, even if litigation were implied from the duties imposed on local agencies and K-14 districts to provide a justification for withholding a public record and a court's duties when litigation is initiated, these duties have been present since the original enactment of the CPRA in 1968, and as a result, the implied duty to engage in litigation would have been present since 1968.

Since 1968, section 6255 has required local agencies and K-14 districts to justify withholding any record.<sup>66</sup> The only substantive change that has occurred since 1968 was the addition of the requirement to provide the justification in writing when the public records request was made in writing. This additional requirement does not create a new duty to engage in litigation. Similarly, since 1968, section 6259 sets forth the duties of the court when litigation is initiated.<sup>67</sup> The only substantive changes to section 6259 are the addition of the requirement on the court to award court costs and attorney fees to a prevailing plaintiff, and the procedures to appeal a court's decision. Neither of these additions creates a new duty to engage in litigation. As a result, the Commission finds that Government Code sections 6255 and 6259 do not impose a state-mandated new program or higher level of service to engage in litigation.

**B. The state-mandated new programs or higher levels of service impose costs mandated by the state on counties, K-14 districts, county offices of education within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556**

<sup>64</sup> Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5.

<sup>65</sup> Pursuant to former Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, which was in effect at the time of the filing of this test claim, a claimant may amend a test claim at "any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim."

<sup>66</sup> Former Government Code section 6255, as added by Statutes 1968, chapter 1473.

<sup>67</sup> Former Government Code section 6259, as added by Statutes 1968, chapter 1473.

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.<sup>68</sup> Government Code section 17514 defines “cost mandated by the state” as follows:

[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.

“Any increased costs” for which claimants may seek reimbursement include both direct and indirect costs.<sup>69</sup>

The claimants estimated that they “incurred more than \$1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b) and funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002”<sup>70</sup> to implement all duties alleged by the claimants to be mandated by the state. Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, pursuant to Government Code section 17556, subdivision (f), Finance argues that the claimants are not entitled to reimbursement for the state-mandated new program or higher levels of service imposed by Government Code sections 6253, 6253.9, 6253.1, 6254.3, and 6255, because the activities mandated by the code sections are necessary to implement a ballot measure approved by voters.<sup>71</sup> In addition, under Government Code section 6253.9, the claimants have fee authority for the costs of producing electronic copies of public records kept in an electronic format. Thus, it is also necessary to determine whether the claimants are precluded from reimbursement pursuant to the “ballot measure” and “fee authority” exceptions to reimbursement found in Government Code section 17556, subdivisions (f) and (d).

#### Ballot measure exception

Government Code section 17556, subdivision (f), prohibits a finding of costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.<sup>72</sup> The prohibition applies regardless of whether the statute was enacted before or after the date on which the ballot measure was approved by voters.

<sup>68</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>69</sup> Government Code section 17564.

<sup>70</sup> 02-TC-51 test claim, Exhibit 1 Declarations of Michael H. Fine, of Riverside Unified School District, and Cheryl Miller of Santa Monica Community College District.

<sup>71</sup> Finance Comments in Response to Request for Comments, dated January 14, 2011. Finance Response to Draft Staff Analysis, dated April 20, 2011.

<sup>72</sup> Government Code section 17556, subdivision (f). See *California School Boards Association v. State of California* (2009) 171 Cal.App.4<sup>th</sup> 1183, finding that the language, “reasonably within the scope of,” to be violative of the California Constitution.

The claimants argue that the ballot measure exception to reimbursement in Government Code section 17556, subdivision (f), does not apply here because the test claim statutes were “enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and [were] not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59.”<sup>73</sup> In addition, the claimants note that Proposition 59 does not expressly include the activities mandated by the test claim statutes.

In 2004, California voters approved Proposition 59 to incorporate the right of access to information concerning the people’s business that was already provided by various state laws, including the CPRA, into article I, section 3 of the California Constitution. The amendment to the Constitution provides in relevant part:

The people have the right of access to information concerning the conduct of the people’s business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

The purpose of Proposition 59 was to “create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private.”<sup>74</sup>

None of the state-mandated new programs or higher levels of service imposed by the test claim statutes are expressly included in the Proposition 59. As a result, it is necessary to determine whether the state-mandated activities are “necessary to implement” Proposition 59.

The court in *California School Boards Association v. State of California*, found that duties imposed by a test claim statute or executive order that are not expressly included in a ballot measure approved by the voters in a statewide or local election are “necessary to implement” the ballot measure pursuant to Government Code section 17556, subdivision (f), when the additional requirements imposed by the state are intended to implement the ballot measure mandate, and the costs are, in context, de minimis such that the requirements are considered part and parcel of the underlying ballot measure mandate.<sup>75</sup> The court also makes a distinction between activities that are “necessary to implement” a ballot measure, and those that are “reasonably within the scope of” a ballot measure. In essence, for an activity to be necessary to implement a ballot measure, it must be more narrowly related to the ballot measure than an activity that simply has anything to do with the subject matter of the ballot measure.<sup>76</sup>

The court borrowed this analysis from the California Supreme Court’s decision in *San Diego Unified School Dist.* which addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The court found that the state requirements were designed to make the underlying federal due process right

<sup>73</sup> Claimant Comments in Response to Request for Comments, dated January 18, 2011.

<sup>74</sup> Ballot Pamphlet, General Election (November 2, 2004) Proposition 59 at <<http://library.uchastings.edu/cgi-bin/starfinder/26556/calprop.txt>> [as of March 21, 2011].

<sup>75</sup> *California School Boards Association v. State of California*, *supra*, 171 Cal.App.4th at p. 1217.

<sup>76</sup> *Id.* at pgs. 1213-1216.

enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective due process rights. Thus, the state requirements were merely incidental to fundamental federal due process requirements and viewed singly or cumulatively they did not significantly increase the costs of compliance with the federal mandate.<sup>77</sup>

Here, because Proposition 59 incorporated the fundamental right of access to information present in the CPRA into the constitution, and the provisions of the CPRA are intended to implement the right of access to public information set forth in the CPRA, it could be argued that the provisions of the CPRA also are intended to implement the ballot measure mandate (i.e. providing open access to information concerning the conduct of the people’s business). However, unlike in *San Diego Unified School Dist.*, the state-mandated activities imposed by the test claim statutes, such as providing electronic copies to the public, assisting members of the public to make a request, and providing a written denial to a written request for public records, are not merely incidental to the right of access to information concerning the conduct of the people’s business. Instead they impose additional requirements unnecessary to enforce the general right to access information regarding the people’s business, and are not narrowly tailored to fit the definition of “necessary to implement.”

Finding that the state-mandated activities are necessary to implement Proposition 59 would suggest that any activity that has anything to do with open government would be necessary to implement Proposition 59. In addition, there is no concrete evidence in the law or in record that the costs of the state-mandated activities, singly or cumulatively, do not significantly increase the cost of complying with the ballot measure mandate.<sup>78 79</sup> As a result, the Commission finds that the record supports the finding of costs mandated by the state and that the Government Code section 17556, subdivision (f), exception does not apply to deny these activities.

#### Fee authority exception

Government Code section 17556, subdivision (d), prohibits a finding of costs mandated by the state where a 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. In addition, the court in *Clovis Unified School Dist. v. Chiang* notes that to the extent that a local agency or school district has the authority to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.<sup>80</sup>

In regard to providing electronic copies of disclosable public records kept in an electronic format, Government Code section 6253.9, subdivision (a)(2), gives fee authority to local agencies and K-14 districts for the “direct costs” of producing a record in an electronic format.

<sup>77</sup> *San Diego School Dist.*, *supra*, 33 Cal.4th at p. 889.

<sup>78</sup> *California School Boards Association v. State of California*, *supra*, 171 Cal.App.4th at p. 1217. See also, *Dept. of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, regarding a concrete showing of evidence.

<sup>79</sup> Pursuant to Government Code section 17564, the claimants estimated under the penalty of perjury that they “incurred more than \$1,000 in staffing and other costs, annually,” in order to meet the burden of showing costs necessary to file a test claim.

<sup>80</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812, citing to *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.



The fee authority that public agencies have under subdivision (a)(2) is limited to the direct cost of producing an electronic copy. The fee authority does not attach to the indirect costs such as the inspection of and handling of the file. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable.<sup>81</sup> As a result this fee authority is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivision (b), expands a public agency's fee authority to include the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. This increased fee authority, however, is not expanded to *all costs*, both direct and indirect. As a result, the Commission finds that the fee authority under Government Code section 6253.9, subdivision (b), is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivisions (a)(2) and (b), however, provides offsetting revenue for the mandated activity of providing an electronic copy of disclosable public records kept in an electronic format and will be identified in the parameters and guidelines.

Pursuant to the above discussion, the Commission finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on local agencies and K-14 districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

## CONCLUSION

The Commission concludes that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the

<sup>81</sup> Government Code section 17564.

reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
  - a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
  - b. describe the information technology and physical location in which the records exist; and
  - c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)
7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting

revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES:**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
  
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

Case No.: 02-TC-10 and 02-TC-51

*California Public Records Act*

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

*(Adopted April 19, 2013)*

*(Served April 25, 2013)*

*(Corrected July 26, 2013)*

*(Served August 2, 2013)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted a statement of decision and parameters and guidelines on consent during a regularly scheduled hearing on April 19, 2013. On May 24, 2013, the Commission granted a request filed by the California Special Districts Association (CSDA) for reconsideration of the decision and parameters and guidelines pursuant to Government Code section 17559 and California Code of Regulations, title 2, section 1188.4 to correctly identify special districts as eligible claimants.

On July 26, 2013, the Commission reconsidered and corrected the decision to clarify that some special districts are eligible to claim reimbursement for this program. Dorothy Holzem appeared on behalf of the requester, CSDA. Andy Nichols appeared on behalf of Nichols Consulting. Geoffrey Neill appeared on behalf of the California State Associations of Counties (CSAC).

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 this corrected statement of decision and parameters and guidelines by a vote of 7-0.

**I. SUMMARY OF THE MANDATE**

These proposed parameters and guidelines pertain to the consolidated *California Public Records Act* test claim (02-TC-10 and 02-TC-51), adopted May 26, 2011. Based on the filing date of the

test claim, the period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. The required activities include:

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats; and
- Removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

The CPRA was originally adopted in 1968 “to more clearly define what constitutes a “public record” open to inspection and what information can be or is required to be withheld from disclosure.”<sup>1</sup> Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a “hodgepodge of statutes and court decisions.”<sup>2</sup> These parameters and guidelines address the statutory amendments to the CPRA made after 1975.

The Commission found in the test claim statement of decision that the requirement for local agencies and school districts to make public records available for inspection during office hours, “except for public records exempted from disclosure or prohibited from disclosure” was required prior to 1975 and thus was not new.<sup>3</sup> The Commission also found that “the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process,” and that the purpose and intent of the CPRA is “to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency.”<sup>4</sup> In addition, the Commission found that a 1981 amendment to CPRA codified the courts’ interpretation, that “CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and

<sup>1</sup> Exhibit A, Test Claim Statement of Decision, at p. 5.

<sup>2</sup> Exhibit A, Test Claim Statement of Decision, at p. 5 [citing *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765].

<sup>3</sup> *Id.*, at p. 12.

<sup>4</sup> *Id.*, at p. 13.

copying.”<sup>5</sup> Finally, the Commission found that pursuant to Government Code sections 6256 and 6257, public agencies (both state and local government) have been required to provide “copies or exact copies of public records upon a request that reasonably describes an identifiable record” since the 1968 enactment of CPRA.<sup>6</sup> These activities, required by the CPRA under prior law, are not eligible for reimbursement.

However, the Commission found that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255, as amended by Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014), impose reimbursable state-mandated programs on local agencies and K-14 school districts, within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, as follows:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
  - a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
  - b. describe the information technology and physical location in which the records exist; and

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.*, at p. 14.

- c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355).)

5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

- a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

In addition, the Commission concluded that the fee authority set forth in Government Code section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and

shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.<sup>7</sup>

## **II. PROCEDURAL HISTORY**

The first test claim was filed by the County of Los Angeles (LA County) on October 15, 2002. A second test claim on the same statutes was filed by Riverside Unified School District (Riverside Unified) on June 26, 2003. Due to an ongoing dispute over the constitutionality of Government Code section 17556(f), and a ballot measure that would have triggered an analysis of the disputed issue, the two CPRA test claims were removed from the Commission's hearing calendar until the constitutionality of section 17556 was resolved in March of 2009.<sup>8</sup> On November 2, 2010, the two claims were consolidated by the executive director. The consolidated test claim was heard, and the statement of decision adopted, on May 26, 2011. A corrected statement of decision was issued on December 17, 2012, to correct a clerical error approving reimbursement for K-14 school districts, rather than K-12 school districts, for activities mandated by Government Code section 6254.3. That code section imposes requirements only on K-12 school districts.

On June 15, 2011, Riverside Unified submitted proposed parameters and guidelines. On June 23, 2011, LA County submitted proposed parameters and guidelines. On July 22, 2011, the State Controller's Office (SCO) submitted comments on the claimants' proposed parameters and guidelines. On July 25, 2011, the Department of Finance (DOF) submitted comments on the claimants' proposed parameters and guidelines. On August 30, 2011, LA County submitted rebuttal comments.

On February 13, 2013, Commission staff issued the draft proposed statement of decision and parameters and guidelines setting this matter for hearing on April 19, 2013. On February 21, 2013, Cost Recovery Systems, Inc. submitted written comments on the draft. On March 5, 2013, claimant LA County submitted written comments on the draft. On March 6, 2013, SCO and DOF each submitted written comments on the draft.

On March 15, 2013, CSAC, which is not a party to this matter and had not submitted any comments on this matter until this time, requested "an extension of the April 19, 2013 hearing date to file an amended set of parameters and guidelines...to include an RRM [reasonable reimbursement methodology]." The letter stated that "the local associations are committed to doing everything possible to reach an agreement with DOF."<sup>9</sup> The tentative timeline set out by CSAC would have postponed this item until the December 2013 hearing. The executive director denied the request for extension, stating "there is no authority for interested parties (such as

<sup>7</sup> Exhibit A, Corrected Statement of Decision, at pp. 4-5.

<sup>8</sup> Exhibit A, Corrected Statement of Decision, at p. 6.

<sup>9</sup> Exhibit K, CSAC, Hearing Postponement Request.



CSAC) to request a postponement of a hearing.”<sup>10</sup> None of the state or local agency parties to this matter requested an extension of time or postponement of the hearing on these parameters and guidelines.

On April 19, 2013, the Commission adopted the statement of decision and parameters and guidelines for the CPRA program.

On May 2, 2013, CSDA filed a request for reconsideration pursuant to Government Code section 17559 and section 1188.4 of the Commission’s regulations of the Commission’s statement of decision and parameters and guidelines for the CPRA program, adopted April 19, 2013. CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision describes the eligible claimants as “any city, county, and city and county, or any school district as defined in Government Code section 17519,” but omits special districts required to comply with the CPRA.

On May 24, 2013, the Commission granted the request for reconsideration and directed staff to schedule the matter for a hearing on the merits. On July 26, 2013, the Commission determined that the statement of decision and parameters and guidelines adopted April 19, 2013, contained an error of law by not including some special districts as eligible claimants for this program. The Commission amended this decision and parameters and guidelines by including additional analysis and findings regarding Sections II and VII of the parameters and guidelines, addressing eligible claimants and offsetting revenues.

### **III. POSITION OF THE PARTIES**

#### **A. Claimant, Riverside Unified’s, Position and Proposed Parameters and Guidelines**

Riverside Unified submitted proposed parameters and guidelines in which the claimant proposes reimbursement for exactly the activities approved in the test claim statement of decision, except that the claimant reorganizes the activities and re-numbers them.<sup>11</sup> Riverside Unified did not submit comments on the draft analysis.

#### **B. Claimant, LA County’s, Position and Proposed Parameters and Guidelines**

LA County submitted proposed parameters and guidelines in which the claimant proposes reimbursement for the activities approved in the test claim statement of decision, but also proposes reimbursement for a number of proposed reasonably necessary activities. These proposed reasonably necessary activities will be described in the analysis below.<sup>12</sup> LA County

<sup>10</sup> Exhibit K, Commission, Denial of Postponement Request.

<sup>11</sup> Exhibit B, Riverside Unified’s Proposed Parameters and Guidelines.

<sup>12</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines.

submitted comments on the draft analysis, reiterating the need for certain reasonably necessary activities proposed, and generally disagreeing with staff's analysis of the scope of the mandate.<sup>13</sup>

### **C. California Special Districts Association Position**

CSDA states the following:

The Parameters and Guidelines for the CPRA . . . provides that “Any city, county, and city and county, or any ‘school district’ as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.” It appears that the term “local agencies” was replaced by “Any city, county, and city and county” for eligible claimants. This language is inconsistent with the eligible claimants identified in the following documents, in which all eligible claimants and affected entities are repeatedly identified as “local agencies”:

- Test Claim filed by the County of Los Angeles (October 2002)
- “Adopted Statement of Decision [on the test claim] (May 26, 2011)
- County of Los Angeles “Proposed Parameters and Guidelines” (June 23, 2011)
- County of Los Angeles “Revised Parameters and Guidelines” (August 30, 2011)

Government Code section 17518 defines “Local agency” to mean any city, county, special district, authority, or other political subdivision of the state. Thus, special districts have been incorrectly removed as eligible claimants. Therefore, we respectfully request that the Commission reconsiders [sic] this omission as allowed under Title 2, California Code of Regulations Section 1188.4 and includes [sic] special districts as eligible claimants to ensure they may continue to seek reimbursement for their adherence to the CPRA mandates.

CSDA also expresses a “strong concern” with the “assertion [in the staff analysis] that a local agency’s power to levy a fee for service renders it ineligible for reimbursement of state mandated local programs.” CSDA requests that the Commission consider three propositions adopted by the voters that amend the Constitution (Proposition 218 (1996), Proposition 1A (2004), and Proposition 26 (2012)), to find that special districts that have the authority to levy fees, or that are enterprise districts, be considered an eligible claimant within the meaning of article XIII B, section 6 of the California Constitution.

### **D. State Controller’s Office Position**

SCO submitted comments on the claimants’ proposed parameters and guidelines, in which SCO stated that “the reimbursable activities listed under the “Scope of Reimbursable Activities” were numbered incorrectly, included several duplications, and were incomplete.” SCO continued, “[f]urthermore, the reimbursable activities listed were confusing, not specific, and needed

<sup>13</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis.

clarification.” SCO also suggested that activities should be designated “one-time” or “ongoing.”<sup>14</sup> SCO’s comments on the draft analysis recommended no changes.<sup>15</sup>

#### **E. Department of Finance Position**

DOF submitted comments on the claimants’ proposed parameters and guidelines, in which DOF raises the following arguments:

- Claimants “appear to add to the activities found reimbursable by the Commission;”
- Many of the activities “appear to be outside the scope of the SOD as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate;”
- Many activities are “duplicative and repetitious or are too vague and general and therefore lack sufficient specificity;”
- A number of activities “do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature;” and
- Several of the activities “could be performed by lower-level staff than what is referenced in the [parameters and guidelines].”

The DOF recommends “that Commission staff apply the *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4<sup>th</sup> 794 case and offset any and all applicable costs for specified activities...to the extent of the fee authority provided by law.”<sup>16</sup>

DOF’s comments on the draft analysis focus on the offsetting revenue provisions of the parameters and guidelines, and are discussed below, as applicable.<sup>17</sup>

#### **IV. COMMISSION FINDINGS**

##### **A. Eligible Claimants (Section II. of the Proposed Parameters and Guidelines)**

Except for certain provisions relating only to school districts, the activities mandated by the *CPRA*, by definition, apply equally to all levels of government, including special districts. Government Code section 6252, a statute within the *CPRA*, defines “local agency” to include “a county; city, whether general law or chartered; city and county; school district; municipal corporation; *district*; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.” And Government Code section 17518 defines “local

<sup>14</sup> Exhibit D, SCO Comments on Proposed Parameters and Guidelines.

<sup>15</sup> Exhibit J, SCO Comments on Draft Analysis.

<sup>16</sup> Exhibit E, DOF Comments on Proposed Parameters and Guidelines.

<sup>17</sup> Exhibit I, DOF Comments on Draft Staff Analysis.

agency” for purposes of mandate reimbursement to mean “any city, county, *special district*, authority, or other political subdivision of the state.”

While it is clear that the mandate applies to cities, counties, any county and city, and school districts, not all special districts are eligible to claim reimbursement under article XIII B, section 6 of the California Constitution. As described below, the courts have made clear that despite the broad definition of “local agency” in section 17518, reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of the California Constitution, and only when the costs in question can be recovered solely from “proceeds of taxes.”<sup>18</sup>

**1. Article XIII B, section 6 requires reimbursement only for local governments subject to the tax and spend limitations of the Constitution.**

To understand the reimbursement requirement in article XIII B, section 6, it is necessary to understand the history of the tax and spend restrictions in articles XIII A and B as originally enacted by Proposition 13, and the later initiatives that amended that article.

The correct approach is to read [article XIII B] section 6 in light of its historical and textual context. The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used.<sup>19</sup>

*a) Articles XIII A and XIII C impose taxing restrictions on property taxes and special taxes.*

Local government does not have an inherent power to levy and collect tax revenue. Article XIII section 24 of the California Constitution provides that “the Legislature may authorize local governments to impose” local taxes as the Legislature sees fit.<sup>20</sup> Thus, the power to tax comes from the Legislature through its enactment of general laws which enable the local governing

<sup>18</sup>*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.

<sup>19</sup> *Redevelopment Agency of the City of San Marcos, supra*, 55 Cal.App.4th 976, 985, quoting *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817. See also, *County of Fresno, supra*, 53 Cal.3d 482, 486; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735, all of which reviewed the requirements of section 6 in light of the tax and spend restrictions of the California Constitution.

<sup>20</sup> Article XIII, section 24 derives from former article XI, section 12 of the 1979 Constitution. (*Santa Clara Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 252.)

body to collect the taxes specified in those general laws.<sup>21</sup> Local government, including special districts, must have statutory authority to levy a tax or have a tax levied on its behalf.

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution, to control ad valorem property taxes and the imposition of new “special taxes.” With respect to property taxes, Article XIII A, section 1, drastically reduced property tax revenue previously enjoyed by local governments by providing that “the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value” and that the one percent (1%) tax was to be collected by counties and “apportioned according to law to the districts within the counties...” Soon after the adoption of this provision in Proposition 13, the Legislature, giving effect to the constitutional command that the “One percent (1%) tax to be collected by the counties [be] *apportioned according to law*,” enacted Government Code section 26912, effective June 24, 1978. Section 26912 provided, among other things, that the amount of revenue derived from real property taxes levied by a county, “shall be allocated by the county auditor *...to each local agency*” of the county according to a designated formula. Section 26912 also provided that “For the purposes of this section, a *local agency* includes a ... special district, ... if such *local agency* levied a property tax during the 1977–78 fiscal year or if a property tax was levied for such *local agency* for such fiscal year, ....” Thus, those special districts that did not levy property taxes or have property taxes levied for them in fiscal year 1977-1978 were no longer eligible to receive property tax revenue.<sup>22</sup> In addition, the Legislature enacted Government Code section 16270, which stated the following:

The Legislature finds and declares that many special districts have the ability to raise revenue through user charges and fees and that their ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIII A of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenue after the 1978–79 fiscal year. Such

<sup>21</sup> *Santa Clara Local Transportation Authority, supra*, 11 Cal.4th 220, 247-249.

<sup>22</sup> See, for example, *Marin Hospital District v. Rothman* (1983) 139 Cal.App.3d 495. In that case, the hospital district was created by statute and had been authorized by law to levy a tax upon real property within its territorial limits. Relying upon other funding, the district did not levy a property tax for fiscal year 1977–1978, nor had such a property tax been levied for it. The court determined that the district could no longer receive property tax revenue following the adoption of Proposition 13. The court determined that “the Legislature concluded (we think reasonably) that special districts which were not in need of property tax revenues during the 1977-1978 fiscal year (i.e., the year preceding Proposition 13’s adoption), and were therefore probably self-supporting, would be among the least affected by the necessary cut-off of such funds.”

districts are encouraged to begin the transition to user fees and charges during the 1978–79 fiscal year.

Article XIII A, section 4, also restricts the ability of local government to impose special taxes by first requiring the approval of the special tax by a two-thirds vote of the qualified electors in the district.<sup>23</sup> Section 4 provides that: “Cities, counties, and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes of real property or a transaction or sales tax on the sale of real property within such City, county, or special district.” “Special taxes” are taxes “levied to fund a specific governmental project or program,” even when the project is the agency’s only reason for existence.<sup>24</sup>

The California Supreme Court, in *Los Angeles County Transportation Commission v. Richmond*, analyzed the term “special district” in article XIII A, section 4 to determine if special districts were subject to the two-thirds vote requirement for special taxes.<sup>25</sup> The court determined that the term “special districts” in section 4 refers to only to those entities authorized to levy a tax on real property. The court relied on the ballot materials, finding that the purpose of section 4 was to restrict the ability of local governments to impose new taxes in order to *replace* the property tax revenue losses brought by section 1. “Since only those ‘special districts’ which levied property taxes could ‘replace’ the ‘loss’ of such taxes, these statements imply that the ‘special districts’ referred to are those which are authorized to levy a property tax.”<sup>26</sup>

In 1991, the California Supreme Court in *Rider v. County of San Diego* broadened its interpretation of the term “special district” in article XIII A, section 4, to include special districts that did not possess the express statutory authority to levy property taxes, if the district was *created after the passage of Proposition 13*, was controlled by entities subject to Proposition 13, and was created in order to raise funds to replace revenues lost by those entities because of Proposition 13.<sup>27</sup> A tax ordinance adopted by San Diego County Regional Justice Facility Financing Agency, an agency created by the Legislature in 1987 in express recognition of the County’s need for improved courtrooms and jails, was at issue in *Rider*. Under the statutory scheme, the Agency was charged with adopting a tax ordinance imposing a supplemental sales

<sup>23</sup> *Los Angeles County Transportation Commission v. Richmond* (1982) 31 Cal.3d 197, 201.

<sup>24</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15. “Special taxes” are not fees. In response to Proposition 13, the Legislature enacted Government Code section 50076, which states:

A special tax shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.

<sup>25</sup> *Los Angeles County Transportation Commission v. Richmond*, *supra*, 31 Cal.3d 197.

<sup>26</sup> *Id.* at pages 205-206.

<sup>27</sup> *Rider*, *supra*, 1 Cal.4th 1.

tax of one-half of 1 percent throughout the County for the purpose of financing the construction of justice facilities. The act provided for a countywide election held for the purpose of approving the tax ordinance by a simple majority vote. The act also provided that the Agency possesses no tax power other than the foregoing sales tax. At an election held in June 1988, the County's voters approved the tax ordinance by a simple majority vote. Taxpayers then challenged the validity of the tax, asserting that it violated the supermajority vote requirements of article XIII A, section 4. The court recognized that the prior

...limitation of the term "special district" to those districts possessing property tax power is unworkable as applied to districts formed after the adoption of Proposition 13, because to our knowledge *no* such agencies possess that power. With limited exceptions, only *counties* are empowered to levy the 1 percent maximum property tax allowed by Proposition 13. [Citations omitted.] In other words, as a practical matter, the proposed extension of *Richmond* to all districts, whenever created, which lack property tax power would read section 4's reference to "special districts" out of existence as applied to districts formed after 1978.<sup>28</sup>

The court also acknowledged the increase in the number of revenue-generating governmental entities which lack the power to assess property taxes, noting there were now numerous "justice facility financing agencies" and authority given to counties to create special transportation districts, funding their programs exclusively through increased sales taxes. Since the court found that the tax was a "special tax" subject to the two-third vote requirement of article XIII A, section 4, the tax, upheld by only a majority of the electorate, was held invalid. The court directed the Agency to place the proceeds in an account to allow the voters to claim refunds.<sup>29</sup>

Thus, after *Rider*, only the following special districts were subject to the two-thirds vote requirement in article XIII A, section 4 when levying special taxes: (1) special districts that had the power to levy property taxes and (2) special districts that did not have the authority to levy a property tax, but were created after Proposition 13 and controlled by entities subject to Proposition 13 in order to raise funds to replace revenues lost by those entities because of Proposition 13. Tax restrictions on special taxes were not imposed on other types of special districts.

In 1996, after many local governments increasingly relied upon other revenue tools to finance local services, Proposition 218 was adopted by the voters to add articles XIII C and XIII D to the

<sup>28</sup> *Id.* at p. 11.

<sup>29</sup> *Ibid.*, See also *Hoogasian Flowers, Inc. v. State Bd. of Equalization* (1994) 23 Cal.App.4th 1264, which applied the same rule to an agency formed by a school district as the taxing authority subject to article XIII A.

California Constitution.<sup>30</sup> Proposition 218 provides that all taxes imposed by any local government shall be deemed to be either a general tax (taxes imposed for general governmental purposes) or a special tax (tax imposed for specific purposes, including those placed into a general fund). “Special purpose districts or agencies,” however, “shall have no power to levy general taxes” and may only levy special taxes. Proposition 218 then required *all* special taxes imposed by a local government to be approved by a two-thirds vote of the electorate.<sup>31</sup> Thus, after Proposition 218, all special districts that have authority to levy a special tax are subject to the two-thirds vote requirement.

Proposition 218 also imposed strict notice and hearing procedures on local government, including special districts, before the adoption of any new or increased fee or assessment. In addition, voter approval of a *majority* of the local electorate was required before a fee or assessment could take effect.<sup>32</sup> By definition in Proposition 218, fees and assessments are not “taxes.”<sup>33</sup>

Proposition 26 was then adopted in 2010. Proposition 26 expressly defines “taxes,” requiring approval by a two-thirds vote, to include some fees and charges that previously could be approved with a majority vote under Proposition 218. Proposition 26 prohibits local government from enacting, increasing, or extending any levy, charge, or exaction defined to be a “tax” without approval from two-thirds of the electorate. Proposition 26 amended article XIII C, section 1, to define a tax as follows:

<sup>30</sup> See, *Apartment Association of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 839, which recognized that the ballot materials for Proposition 218 stated the following:

There are now over 5,000 local districts which can impose fees and assessments without the consent of local voters. Special districts have increased assessments by over 2400% over 15 years.”

<sup>31</sup> California Constitution, article XIII C, sections 1 and 2. Section 2 states that “No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.”

<sup>32</sup> California Constitution, article XIII D.

<sup>33</sup> Article XIII D, section 2 defines “assessment” to mean

... any levy or charge upon real property by an agency for a special benefit conferred upon the real property. “Assessment” includes, but is not limited to, “special assessment,” “benefit assessment,” “maintenance assessment,” and “special assessment tax.”

“Fee” or “charge” means “any levy other than an ad valorem tax, a special tax or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property related service.”



As used in this article, “tax” means any levy, charge, or exaction, of any kind imposed by a local government, except the following:

- (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
- (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
- (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
- (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
- (5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
- (6) A charge imposed as a condition of property development.
- (7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

There will be litigation regarding the meaning of Proposition 26, and it is likely that some fees will actually be considered “taxes” under Proposition 26. However, to date, there are no published cases that have invalidated a fee, or determined that a “fee” imposed was actually a tax under a Proposition 26 analysis.<sup>34</sup> In the meantime, the analysis of Proposition 26 by the

<sup>34</sup> To date, there are two published cases interpreting Proposition 26, both finding that the levy imposed was a fee and not a tax. *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982 dealt with regulatory fees associated with a city ordinance requiring annual inspections of residential rental property. The court held the regulatory fees were not an unconstitutional special tax enacted without voter consent. The fees were imposed to cover the cost of performing inspections, the fees did not exceed the approximate cost of the activity, and the fee schedule itself showed the basis for the apportionment and established that the fees were reasonably related to the payors' burden upon the inspection program.

*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310 addressed a county ordinance requiring retail establishments to charge customers for each carryout paper bag provided. The court held that the ordinance was not a “tax within the meaning of Proposition 26. The charge

Legislative Analyst's Office (LAO) is helpful and can be used to determine what the voters intended.<sup>35</sup> In its summary of Proposition 26, LAO explained the state of the law before Proposition 26 and described the differences between taxes, and fees and charges as follows:

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- User fees—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- Regulatory fees—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- Property charges—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etcetera). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).<sup>36</sup>

Over the years, however, there was disagreement about the difference of regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit.<sup>37</sup>

was not remitted to the county, but was payable to and retained by the store providing the bag, and the store was required to use the funds for specified purposes.

<sup>35</sup> Ballot summaries and the “Analysis by the Legislative Analyst” in the “Voter Information Guide” are recognized sources for determining the voters' intent.” (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 116.)

<sup>36</sup> Legislative Analyst's Office, Summary of Proposition 26, July 15, 2010.

<sup>37</sup> For example, in *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, the California Supreme Court determined that a regulatory fee on businesses that made products

Thus, under Proposition 26, LAO states that “taxes” now generally include those fees and charges that government imposes to address health, environmental, or other societal or economic concerns – charges that benefit the public broadly, as follows:

***Expands Definition.*** This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.<sup>38</sup>

However, LAO determined that the change in the definition of “taxes” does not affect most user fees, property development charges, and property assessments that affect individuals or businesses. In addition, most other fees or charges in existence at the time of the November 2, 2010 election would not be affected by Proposition 26 unless that fee is later increased or extended, or the fee is increased by state law between January 1, 2010 and November 2, 2010, and conflicts with Proposition 26.<sup>39</sup>

b) *Article XIII B imposes spending limitations on “proceeds of taxes.”*

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as “the next logical step to Proposition 13.” While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, “the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the ‘proceeds of taxes.’”<sup>40</sup> The appropriations limit in article XIII B is accomplished by limiting the “total annual appropriations subject to limitation” so that “a government entity may not spend more in one year on a program funded with the proceeds of taxes than it did in the prior year.”<sup>41</sup> No “appropriations subject to limitation” may be made in excess of the

containing lead was a fee, and not a tax, even though fee revenue was used to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. The court’s ruling in *Sinclair Paint* led to Proposition 26.

<sup>38</sup> Legislative Analyst’s Office, Summary of Proposition 26, July 15, 2010.

<sup>39</sup> *Ibid.*

<sup>40</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>41</sup> *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 107.

appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.<sup>42</sup>

The spending limit applies only to appropriations made from “proceeds of taxes.” “Proceeds of taxes” for local governments are defined in article XIII B, section 8(c) to include *all tax revenues*; revenues from user charges and fees *to the extent that those proceeds exceed* the costs reasonably borne by that entity in providing the regulation, product, or service; proceeds from the investment of tax revenues; and subventions from the state, other than pursuant to article XIII B, section 6. “All tax revenues” would include the revenues generated from the additional taxes identified in Proposition 26. However, the appropriations limit does not apply to an appropriation totally funded by “other than the proceeds of taxes.”<sup>43</sup>

Thus, article XIII B does not place spending limits on the expenditure of revenue from fees or assessments.<sup>44</sup> “Proceeds of taxes” do not include “the proceeds from the sale of bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith.”<sup>45</sup>

- c) *The reimbursement requirement of article XIII B, section 6, is triggered only when the costs in question are “proceeds of taxes” subject to the appropriations limit of article XIII B.*

Section 6 was included in article XIII B in recognition that articles XIII A and XIII B of the Constitution severely restricted the taxing and spending powers of local governments.<sup>46</sup> Article XIII B, section 6 provides in relevant part “[w]henver the Legislature ... mandates a new

<sup>42</sup> Article XIII B, section 2.

<sup>43</sup> California Constitution, article XIII B, section 9(c), which states: “‘Appropriations subject to limitation’ for each entity of government do not include: (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.”

<sup>44</sup> *Placer v. Corin, supra*, 113 Cal.App.3d 443, 450.

<sup>45</sup> *Id.* at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B; see also, *County of Fresno, supra*, 53 Cal.3d 482, 487.

<sup>46</sup> *County of Fresno, supra*, 53 Cal.3d at p. 487; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service....”<sup>47</sup> The Supreme Court recognized the purpose of article XIII B, section 6 was to protect the *tax revenues* of local governments from state mandates that would require the expenditure of tax revenues.

Specifically, [article XIII B, section 6] was designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ...local government for the costs of a state-mandated new program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention *only when the costs in question can be recovered solely from tax revenues.*<sup>48</sup>

Thus, article XIII B, section 6 does not require reimbursement for expenses that are recoverable from sources other than tax revenue. As stated earlier, these other sources of revenue include revenue received from service charges, fees, or assessments. Thus, if a local agency is funded solely from service charges, fees, or assessments – revenues which are excluded from the spending limit – they are not entitled to reimbursement under article XIII B, section 6 and are thus, not eligible claimants for mandates purposes. A local agency cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>49</sup>

CSDA nevertheless argues that local agencies funded solely from service charges, fees, or assessments should be entitled to reimbursement in cases where the state-mandated program

<sup>47</sup> In November 2004, the voters approved Proposition 1A, which amended article XIII B, section 6 by requiring the state to suspend state mandates in any year the Legislature does not fully fund the mandate; expands the definition of state mandate to include the transfer of responsibility of a program for which the state previously had full or partial responsibility; and requires the repayment of the amounts owed to local governments for state mandated costs incurred before fiscal year 2004-2005. Proposition 1A also protected local revenue (local property tax, sales tax, and VLF revenues) by prohibiting the Legislature from taking any action to reduce or decrease those revenues, or from shifting property taxes to schools except under limited circumstances. Proposition 1A, however, does not affect whether a special district is eligible to claim reimbursement for a state-mandated program.

<sup>48</sup> *County of Fresno, supra*, 53 Cal.3d at p. 487; See also, *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280, and Government Code section 17556(d).

<sup>49</sup> *Placer v. Corin, supra*, 113 Cal.App.3d at p. 453; *City of El Monte, supra*, 83 Cal.App.4th 266, 281-282.

itself is not self-financing with fee authority. In this respect, CSDA attempts to distinguish this case from the facts presented in *County of Fresno v. State of California*, the case which first held that article XIII B, section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. *County of Fresno* addressed a hazardous material abatement program for local agencies and the statutory scheme of the program provided fee authority to the local agencies to recover their costs.<sup>50</sup>

The courts, however, have rejected CSDA's argument. In *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates*, the court addressed a statute requiring redevelopment agencies to deposit 20 percent of its tax increment financing generated from project areas into a fund to improve the supply of affordable housing. The program at issue was not self-financing. The Commission and the trial court denied the claim, finding that the funds used by the agency were not "proceeds of taxes," were exempt from the spending limit in article XIII B and, thus, exempt from the reimbursement requirement of section 6. Like CSDA, the agency on appeal argued that the *County of Fresno* case should be read narrowly to cover only self-financing programs, and that the broad statements by the Supreme Court in *County of Fresno* defining "costs" was mere dicta. The agency also argued that the plain language of article XIII B, section 6 does not expressly discuss the source of funds used by the agency to pay the costs of a program. Thus, the agency urged the court to approve the reimbursement requirement. The court disagreed with both arguments, and held as follows:

The correct approach is to read section 6 in light of its historical and textual context. The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. [Citation omitted.]

The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. [Citation omitted.] A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level. [Citation omitted.] The related goals of these enactments require us to read the term "costs" in section 6 in light of the enactment as a whole.<sup>51</sup>

Using this approach, the court determined that reimbursement is required only when the costs in question can be recovered solely from tax revenues. No duty of subvention is triggered where the local agency is not required to expend "proceeds of taxes":

For all these reasons, we conclude the same policies which support exempting tax increment revenues [received by redevelopment agencies] from article XIII B

<sup>50</sup> *County of Fresno, supra*, 53 Cal.3d at p. 485.

<sup>51</sup> *Redevelopment Agency of the City of San Marcos, supra*, 55 Cal.App.4th 976, 985.

appropriations limits also support denying reimbursement under section 6. ... Section 6 “requires subvention only when the costs in question can be recovered solely from tax revenues.” [Citation omitted.] No duty of subvention is triggered where the local agency is not required to expend proceeds of taxes. ... Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable “cost” under section 6.<sup>52</sup>

These cases remain good law, and no authorities have found that reimbursement under section 6 is required when the expenditure is made from fees or assessments. The new restrictions on fees established by Proposition 218 (which now require a majority vote of the electorate) do not change this result. Article XIII B, section 6 is designed to protect the limited tax revenue that is restricted by the spending limit of article XIII B. There is no spending limit for fees or assessments.

Accordingly, only those local agencies that are subject to the tax and spend limitations of the California Constitution and use their proceeds of taxes to pay the costs incurred to implement a state-mandated program are eligible to claim reimbursement under article XIII B, section 6.

**2. Some special districts are subject to the tax and spend limitations of the Constitution and, thus, are generally eligible to claim reimbursement under article XIII B, section 6.**

Special districts come in many forms, but their authority is derived by statute; either under a principal act or a special act. A principal act is a generic statute which applies to all special districts of that type. For example, the Community Services District Law governs all 325 community services districts. There are about 50 principal act statutes which local voters can use to create and govern special districts.<sup>53</sup> On the other hand, districts which are regional in nature, have unusual governing board requirements, provide unique services, or need special financing, result in special act districts. Examples of districts formed under special acts include the Embarcadero Municipal Improvement District (Santa Barbara County), the Humboldt Bay Harbor, Recreation, and Conservation District, and the Shasta-Tehama County Watermaster District. There are about 125 special act districts.<sup>54</sup> All principal acts are codified state laws, whereas most special acts are not codified. For a list of special acts, see Appendix A in the State Controller’s Special Districts Annual Report.<sup>55</sup>

<sup>52</sup> *Id.* at p. 987.

<sup>53</sup> Senate Local Government Committee, *What’s So Special About Special Districts?* (Fourth Edition), October 2010, p. 5. (<http://www.rsrpd.org/admin/Whatsso.pdf>)

<sup>54</sup> *Ibid.*

<sup>55</sup> State Controller, *Special Districts Annual Report*, December 13, 2011, Appendix A. ([www.sco.ca.gov/Files-ARD-Local/LocRep/2010-11\\_Special\\_District.pdf](http://www.sco.ca.gov/Files-ARD-Local/LocRep/2010-11_Special_District.pdf))

Just over a quarter of the special districts are enterprise districts. Enterprise districts deliver services that are run like business enterprises and have the statutory authority to charge their customers fees for services. For example, a hospital district generally charges room fees paid by patients, not the district's other residents. Generally, enterprise districts are not subject to the tax and spend restrictions of article XIII of the California Constitution and so are not eligible to receive mandate reimbursement. Nearly all of the water, wastewater, and hospital districts are enterprise districts that charge rates or fees for their services and do not have the statutory authority to receive any "proceeds of taxes."<sup>56</sup> Since enterprise districts are usually not funded by proceeds of taxes, they are generally exempt from article XIII B's spending limit and, thus, are not entitled to reimbursement under section 6. However, some enterprise districts operate with a mix of tax and fee revenues; Alpaugh Irrigation District, Canebrake County Water District, Irvine Ranch Water District, and San Bernardino Valley Municipal Water District, for example.<sup>57</sup> These districts are subject to the tax and spend limitations of articles XIII A and XIII B, and are thus generally eligible claimants for mandates purposes. However, as explained in section B of this analysis, if the expenses for the mandated program are funded totally from fee revenue, then the fee authority provides a complete offset and no reimbursement is required, even for these otherwise eligible special districts.

Conversely, non-enterprise districts provide services which have been deemed by some to not easily lend themselves to fees.<sup>58</sup> It has been argued, for example, that fire protection services and mosquito abatement programs benefit the entire community, not just individual residents.<sup>59</sup> Non-enterprise districts have the statutory authority to levy taxes, and rely overwhelmingly on property tax revenues and parcel taxes to pay their operational expenses. Non-enterprise districts are subject to the tax and spend limitations of the California Constitution and are generally eligible claimants for reimbursement of state-mandated programs. Services commonly provided by non-enterprise districts include cemetery, fire protection, library, and police services.

In addition to the statutes that provide authority to each special district, the SCO issues an annual report on special districts that identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. On December 13, 2011, SCO issued its

<sup>56</sup> See Senate Local Government, *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 6. (<http://www.rsrpd.org/admin/Whatsso.pdf>)

<sup>57</sup> State Controller, *Special Districts Annual Report*, December 13, 2011. ([www.sco.ca.gov/Files-ARD-Local/LocRep/2010-11\\_Special\\_District.pdf](http://www.sco.ca.gov/Files-ARD-Local/LocRep/2010-11_Special_District.pdf)); Little Hoover Commission, *Special Districts: Relics of the Past or Resources for the Future*, p. 70. (<http://www.lhc.ca.gov/studies/155/report155.pdf>)

<sup>58</sup> See Senate Local Government, *What's So Special About Special Districts?* (Fourth Edition), October 2010, p. 6. (<http://www.rsrpd.org/admin/Whatsso.pdf>)

<sup>59</sup> *Ibid.*



most recent *Special Districts Annual Report* for fiscal year 2009-2010. The report shows that approximately 610, or roughly 17 percent of all special districts, are subject to the appropriations limit of article XIII B, thus making them eligible claimants for mandates purposes. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463.<sup>60</sup> The report is required to contain, among other things:

- (a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable during the next preceding fiscal year.
- (b) The aggregate amount of taxes levied and assessed against this property collected by or for the local agency during the fiscal year. ...
- (e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property.<sup>61</sup>

If an officer of the district willfully and knowingly rendered a false report to the Controller, that officer would be guilty of a misdemeanor.<sup>62</sup> The report submitted by the special districts contains the data upon which the SCO bases its *Special Districts Annual Report*.

The SCO can use its report to determine if a special district is eligible to claim reimbursement. It is noteworthy though, that Government Code section 12463 has not been updated to include information on other local taxes that may be imposed, which are also subject to the spending limitations of article XIII B. Therefore, even if the *Special Districts Annual Report* does not identify a particular special district as subject to the spending limitation, the SCO can look to other sources. If the Legislature has authorized the special district to levy a tax, or a court determines that a fee levied by the district was actually a "tax" and the district is not required to return that tax to the taxpayers, but instead uses it for district purposes, then the district is eligible to claim reimbursement.

Accordingly, Section II of the parameters and guidelines, addressing the eligible claimants for this program, provides as follows:

Any city; county; city and county; special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes; or any "school district" as defined in Government Code section 17519

<sup>60</sup> Government Code section 12463.

<sup>61</sup> Government Code section 53892.

<sup>62</sup> Government Code section 53894.

which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

**B. Period of Reimbursement (Section III. of Proposed Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. LA County filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred on or after July 1, 2001 are reimbursable under this consolidated test claim, for statutes in effect before July 1, 2001, or later, as specified, for statutes effective after July 1, 2001. The language of Section III. Period of Reimbursement, therefore reflects a reimbursement period beginning July 1, 2001, or later for specified activities added by subsequent statutes.

**C. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)**

Government Code section 17557 provides that “[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”<sup>63</sup> The Commission’s regulations provide that parameters and guidelines shall include “a description of the most reasonable methods of complying with the mandate.” “‘The most reasonable methods of complying with the mandate’ are those methods not specified in statute or executive order that are necessary to carry out the mandated program.”<sup>64</sup>

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.<sup>65</sup> Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;<sup>66</sup> and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>67</sup> The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with ‘any’ evidence.”<sup>68</sup> Moreover, substantial evidence is not submitted by a party; it is a standard of review, which

<sup>63</sup> Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

<sup>64</sup> Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

<sup>65</sup> Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).

<sup>66</sup> *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5<sup>th</sup> Dist. 1998) 202 Cal.App.3d 791, at p. 805.

<sup>67</sup> *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4<sup>th</sup> 330, 335.

<sup>68</sup> *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if they are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”<sup>69</sup>

The Commission’s regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,” and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice “in the manner and of such information as is described in Government Code section 11515.”<sup>70</sup> Therefore, reasonably necessary activities, in order to be adopted by the Commission, must be supported by substantial evidence, and that evidence must include something other than hearsay evidence.

LA County has proposed reimbursement for a number of alleged reasonably necessary activities, in its Revised Proposed Parameters and Guidelines, attached as Exhibit C. These are analyzed below, incorporating SCO and DOF comments where appropriate. The claimant has ordered and categorized the proposed reasonably necessary activities under headings that approximate, but overstate, the language of the reimbursable activities expressly approved in the test claim statement of decision. The following analysis will determine that some of the activities that LA County proposes are reasonably necessary to implement the mandated activities approved in the test claim statement of decision, and others are beyond the scope of what was approved in the test claim statement of decision, or are not new.

### **1. Evidence Filed by LA County in Support of its Request**

The draft staff analysis pointed out that the claimants had submitted scant evidence that the proposed activities are necessary to implement the mandate: four declarations were submitted, each of which referred to an “Attachment A,” prepared by LA County’s representative on the test claim; but none of those four declarations directly endorsed the contents of “Attachment A,” or stated directly why or how the activities referenced therein are necessary to comply with the mandate. Instead, the declarants stated that they had *reviewed* the attachment, and that the attachment “includes and summarizes” the department’s statutory and reasonably necessary activities for the parameters and guidelines.<sup>71</sup>

LA County responded to the draft analysis by submitting new declarations, and a new Attachment A. LA County asserted that each of the new declarations “adds substantial evidence

<sup>69</sup> *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

<sup>70</sup> Code of Regulations, title 2, section 1187.5.

<sup>71</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, Exhibits 1-4.

to the record supporting a Commission decision to adopt CPRA Ps&Gs which include the County's revisions."<sup>72</sup> As discussed above, "substantial evidence" is not a factor or element submitted by a party; it is the standard of review that either supports or fails to support the Commission's decision. And in no event is "substantial evidence" that which compels a particular result, as LA County's assertion suggests: the presence or absence of substantial evidence is considered in the light most favorable to the decision made; in this context, the decision whether to accept LA County's proposed revisions to the parameters and guidelines.

The prior declaration of Diane Reagan stated that "I have reviewed Attachment A which *includes and summarizes* County Counsel's statutory and reasonably necessary activities for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components." Ms. Reagan did not state on her own information and belief that the activities in Attachment A are necessary to implement the mandate, nor indicate any cognizance of what was mandated under prior law.<sup>73</sup> The new declaration submitted by the claimant states that Ms. Reagan has reviewed the draft staff analysis, and includes new Attachment A, proposing changes, including re-inserting one-time training of employees charged with implementing the CPRA activities. Reimbursement for annual training was previously requested, and staff recommended denial. Ms. Reagan's declaration states as follows:

I declare on information and belief that the changes recommended to Commission staff's "reimbursable activities" are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed, and provided to the requestor in a timely and cost-efficient manner.<sup>74</sup>

The same result obtains in the declarations of Rick Brouwer and Shaun Mathers, both of whom previously acknowledged having read Attachment A, but neither of whom expressly endorsed its content.<sup>75</sup> New declarations submitted by Mr. Brouwer and Mr. Mathers suggest a greater degree of personal knowledge than was asserted before, and assert more emphatically an understanding of what activities are necessary to comply with the mandate.

However, none of the three new declarations provides any analysis or reasoning to explain why training is necessary to implement the higher level of service approved in the test claim statement of decision, nor why the requirement to assist requestors in making an effective public records request necessarily implies that such requests and searches must be tracked, processed, and provided to the requestor in a timely and efficient manner. As discussed at length below, the amendments to CPRA enacted by the test claim statutes were intended to remedy inadequacies in

<sup>72</sup> Exhibit H, LA County's Comments on Draft Staff Analysis, Exhibit 1, at pp. 2-4.

<sup>73</sup> Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibit 1.

<sup>74</sup> Exhibit H, LA County's Comments on Draft Staff Analysis, Exhibit 1, at p. 2.

<sup>75</sup> Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibits 3-4.

the provision of public records act services originally enacted in 1968. Even if tracking and processing of requests is necessary, there is no explanation why tracking and processing would not have been necessary under prior law. One-time training to implement the incremental changes is discussed below, but such training must be strictly limited to the increased level of service.

Finally, whatever the change in form and emphasis attempted by the amended declarations, the finding of reasonably necessary activities is still a finding of law, and declarations from claimants may inform that decision, but are not controlling, even in the absence of competing submissions. The self-serving statement that “substantial evidence has been provided by three County declarants supporting a Commission decision to adopt the [parameters and guidelines] as revised by the County” is not persuasive.<sup>76</sup> If it cannot be said as a matter of law that an activity is either reasonably necessary to implement the mandate, or within the scope of the mandate, that activity cannot be approved. More importantly, “substantial evidence” is a legal standard, which is defined by the contours of a court’s review of the Commission’s decision; substantial evidence is that which supports a legal finding, not a particular fact or item of evidence proffered by a party, or a quantum of evidence that necessitates or compels a particular result. Thus, “substantial evidence” is developed on the basis of the whole record.

The Commission finds that former Attachment A does not provide sufficient evidence of reasonably necessary activities because it lacks clear explanation why the proposed activities are *necessary* to implement the mandated increased levels of service. Rather, these declarations support the assertion that these are the practices of the respective agencies, which is not directly relevant to whether claimants have a legal duty to perform these activities, or whether they are reasonably necessary to implement the mandate.

The Commission finds also that the three additional declarations submitted do little to establish, as a matter of law, that the asserted activities are reasonably necessary to carry out the mandate. None of the three declarations illustrate how the practices of the county and its component agencies are reasonably necessary to implement the reimbursable activities approved by the Commission.

Additionally, the claimant cites to the declaration of Commander Castro, submitted in the County’s 2002 test claim filing, in which the declarant states that it is his information and belief that “the new public record duties imposed on the County, *as detailed on the attached list*, are reasonably necessary in complying with the test claim legislation.”<sup>77</sup> The attached list to which Commander Castro’s declaration refers, without explanation or context, states that claimants should be reimbursed for:

<sup>76</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 4.

<sup>77</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 4 [emphasis added].

### One-time Activities

1. Develop policies, protocols.
2. Conduct training on implementing test claim legislation.
3. Purchase computers to monitor and document public record service actions.
4. Purchase or develop data base software for tracking and processing Public Record Act requests.
5. Develop a Web Site for public record disclosure requests.

### Continuing Activities

- I. Staff time for:
  - A. Station or branch personnel.
    1. Assistance in defining telephone, walk-in or written requests.
    2. Writing and logging request.
    3. Station-level research.
    4. If availability known, notify requestor.
    5. Indicate date/time available.
    6. If availability not known, forward request to central unit.
  - B. Central Unit Personnel
    1. Assistance in defining telephone, walk-in or written requests.
    2. Writing and logging request.
    3. Central Unit research.
    4. If availability known, notify requestor.
    5. Indicate date/time available.
    6. If availability not known:
      - a. consult with specialized personnel.
      - b. document findings.
      - c. notify requestor of results.
  - C. County Counsel-legal services to implement and comply with the test claim legislation, including Gov Code 6253.1.<sup>78</sup>

LA County implies that this list should simply be accepted and approved by the Commission, but the submission is insufficiently detailed, and does not demonstrate any consideration of prior law requirements or specifically link the proposed activities to any requirement in law. Research, in particular, whether taking place at the “station-level” or the “Central Unit,” is not meaningfully distinguished from the requirements to make a determination whether records requested are exempt from disclosure, as was required under prior law. More importantly, Commander Castro’s declaration states only an opinion regarding the means by which his department implements CPRA, and that “the County’s new State mandated duties and resulting costs in

<sup>78</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 4-5; Claimant’s Exhibit 5.

implementing the test claim legislation are, in my opinion, reimbursable ‘costs mandated by the State,’ as defined in Government Code section 17514.”<sup>79</sup>

The Commission finds that LA County’s submissions are not sufficient to support a finding by the Commission that the county’s proposed reasonably necessary activities are reasonably necessary as a matter of law. However, to the extent that the activities described in Attachment A, and in LA County’s proposed parameters and guidelines, and the newly-submitted exhibits here, are clarifying of the mandated activities approved in the test claim statement of decision, or reasonably define the scope of the approved activities, the suggested activities will be included in the proposed parameters and guidelines. The following analysis will address each proposed activity in turn, maintaining consistency with the test claim statement of decision and distinguishing activities which were required under prior law and are therefore not reimbursable.

## **2. One-time Activities**

### **a. Developing Policies and Procedures to Implement the Mandate**

LA County has proposed reimbursement for the following:

To develop policies, protocols, manuals and procedures for implementing the following reimbursable California Public Record Act (CPRA) provisions:

- a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).
- b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).
- c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).
- d. Identifying litigation, claims, and related records which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).
- e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that

<sup>79</sup> Exhibit H, LA County’s Exhibit 5

includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).<sup>80</sup>

The Commission has routinely approved reimbursement for the development of policies and procedures to address the implementation of mandated new programs or increased levels of service determined to be reimbursable. And it is easily imagined that changes to CPRA would necessitate an update of policies and procedures to implement the mandate. However, as will appear below to be a consistently recurring theme, what was approved in the test claim statement of decision was only an *incremental* increase in service: to provide records in *electronic form*; to provide a time frame for response, and to ensure that the response, when denying the request, is in writing; and to place the burden on agencies to assist the public in making effective public records requests.<sup>81</sup> As discussed in the test claim statement of decision, the duty of government agencies (both state and local) to make records available for inspection reaches back to the 1968 statute, and is therefore not new.<sup>82</sup> The test claim statement of decision also notes that public records, per the interpretation of the courts, included “every conceivable kind of record that is involved in the governmental process,” and the spirit of the CPRA was “to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency.”<sup>83</sup> Moreover, the Commission found that, “since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records.”<sup>84</sup> The test claim statement of decision also found that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement.

The Commission concluded in the test claim statement of decision that the purpose of amending the CPRA to provide for copies of electronic records was to “substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated with large volumes of paper records,” and that therefore “the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.”<sup>85</sup>

<sup>80</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, at p. 15.

<sup>81</sup> See Exhibit A, Test Claim Statement of Decision, at pp. 14-16.

<sup>82</sup> *Id.*, at p. 12.

<sup>83</sup> *Id.*, at p. 13 [citing *Nor. Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, p. 123-124].

<sup>84</sup> *Id.* at p.14. citing former Government Code sections 6256 and 6257 as adopted by Statutes 1968, chapter 1473.

<sup>85</sup> Exhibit A, Test Claim Statement of Decision, at pp. 14-15.



However, because the requirement to provide copies of disclosable public records upon request was an element of prior law,<sup>86</sup> the claimants cannot receive reimbursement for *making a determination whether a record is disclosable*, or for *providing records* upon request; those activities are not new and were required under prior law. Only the incremental increase in service of providing copies of records *in an electronic format*, and of providing written notice of the determination *within 10 days* whether a record is disclosable, can be reimbursed. And in this context, only the development or updating of policies and procedures to perform these incrementally increased levels of service are reimbursable.

Therefore item a., above, developing a policy or procedure for “Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable” is denied. The underlying requirement to determine whether records or parts thereof are disclosable is not new, and there is no meaningful difference between making that determination for physical records and making that determination for electronic records. Similarly, item b., above, developing policies or procedures for “Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination,” is only reimbursable for updating the existing policy or procedure to provide for the new deadline to provide notice of the determination within 10 days, and to provide for a written notice of the disclosure determination, as these activities are new.

LA County’s proposed parameters and guidelines do not include any information about the activity of developing policies and procedures for implementing the activities that were approved only for schools and school districts. If policies and procedures are to be reimbursed as a one-time activity for counties, school districts should receive the same treatment since the mandate in this regard is the same for counties and school districts, and therefore receive reimbursement for developing policies and procedures to implement those new mandated activities also.

The Commission finds that the development of policies, protocols, manuals and procedures *to implement the newly mandated activities* identified in Section IV. B. is approved for all claimants, for *one-time reimbursement*, but not for policies and procedures for “[d]etermining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable,” and not for policies and procedures for determining whether a record is disclosable, but only for the higher level of service of providing notice of the determination within 10 days. Section IV.A. of the parameters and guidelines authorizes reimbursement for this one-time activity as follows:

*Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The*

<sup>86</sup> Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

*activities in section IV.B. represent the incremental higher level of service approved by the Commission.*

*This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.*

b. One-Time Training

In the draft analysis, reimbursement for Annual Training was recommended for denial. In comments on the draft staff analysis, LA County answered with a request for reimbursement of one-time training, excluding training on existing requirements of CPRA and provided an explanation of why this was reasonably necessary to implement the mandated activities. The one-time activity proposed for reimbursement by the claimant is as follows:

*One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination whether a record is disclosable.<sup>87</sup>*

As discussed above, the test claim statutes impose only an incremental higher level of service, but that incremental increase includes providing copies of public records in an electronic format, as specified; providing a disclosure determination within 10 days, or explaining why a disclosure determination cannot be provided within that time; providing assistance to the public in making effective public records requests; and providing a written response when a record is determined not to be disclosable. To the extent that these incremental increases in service may require training, one-time training may be approved for each employee whose duties include responding to CPRA requests consistently with the test claim statute.

The Commission finds that one-time training of employees is reasonably necessary to comply with the mandated activities. The parameters and guidelines include the one-time activity of training employees, as follows:

*One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.*

*This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these*

<sup>87</sup> Exhibit H, LA County's Comments on Draft Staff Analysis, at p. 7.

*parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.*

**3. On-Going Activity: Acquiring or Developing Technology and Equipment to Track and Process Public Records Requests**

LA County has proposed reimbursement for the following activities relating to acquiring or developing technology and equipment:

*To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).*

*To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable).*

*To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).<sup>88</sup>*

These activities are not established as being reasonably necessary on the basis of the record. As discussed above, none of the four declarations submitted directly supports a finding that the activities proposed are reasonably necessary to comply with the mandated activities. Moreover, none of the four declarations refers to any technological difficulties that could be ameliorated by tracking software or documentation. Neither do any of the four declarants specifically cite the tracking of requests as a necessary activity. Finally, none of the other exhibits that LA County has submitted speaks to the necessity of technological methods to “track and process” or “monitor and document” public records requests. The need to “track and process” public record requests is not new, in any event, since the CPRA has been law since 1968 and public record requests have required processing for nearly 35 years.

DOF argues, in its comments on the claimants’ proposed parameters and guidelines, that many of the activities, “including, but not limited to, developing data base software for tracking and processing public records requests appear to be outside the scope of the [statement of decision] as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate.”<sup>89</sup> LA County does not directly answer that argument in its rebuttal comments, instead arguing that the CPRA amendments giving rise to the test claim were intended to prevent public agencies from ignoring public records requests. LA County argues that “tracking and processing public records act requests to ensure timely compliance of CPRA

<sup>88</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, at p. 6.

<sup>89</sup> Exhibit E, DOF Comments on Proposed Parameters and Guidelines.

provisions” is necessary, and should be reimbursable, because without “such systems, the status of requests would be left to memory – easily ignored as in the past.”<sup>90</sup>

Even accepting LA County’s argument that a “system” for tracking and processing of records is essential to comply with the mandate, nothing submitted in the record amounts to substantial evidence that acquiring or developing a data base or purchasing or leasing computers is necessary to comply with the mandated activities approved by the Commission in the test claim statement of decision. Nor does LA County answer DOF’s charge that such methods “were likely already required and utilized before this mandate and for purposes other than complying with this mandate.” Furthermore, the claimants ignore the fact that whatever difficulties in tracking and responding to public records requests might have obtained prior to the enactment of the test claim statutes, the fundamental and existing requirement to make records available and provide copies upon request has not changed; a lost or ignored records request was no more permitted under prior law than it can be permitted now.<sup>91</sup> The state is not required to provide reimbursement to local government for increased costs of complying with an existing requirement merely because local government did not comply prior law. Compliance with existing law is presumed.

As discussed above, the changes implicated here are incremental. The requirement to respond to a public records request is not new. The bill analysis attached to LA County’s rebuttal comments describes an audit in which it was found that local agencies rejected or ignored public records requests 77% of the time.<sup>92</sup> LA County cites this as evidence of the need for tracking software and other technology, but it is also evidence that the test claim statute was meant to remedy an inadequacy; that the Legislature was not satisfied that local governments were fully and properly implementing the CPRA, and the Legislature chose to make the requirements more stringent in order to encourage more consistent compliance. To the extent that local governments must implement processes to track records requests to avoid losing them or ignoring them, those requirements are not new; the prior law was not being implemented properly and completely. Moreover, to the extent that existing equipment is inadequate to implement the mandate, replacing such outmoded equipment is not reimbursable because the underlying mandate to receive and respond to public records requests is not new.

LA County’s comments on the draft staff analysis continue to assert the need for computers and other technology to implement the mandate. The county requests reimbursement for “the pro rata costs of purchasing and installing software systems permitting key word searches for those

<sup>90</sup> Exhibit F, LA County’s Rebuttal Comments, at p. 4.

<sup>91</sup> See Government Code sections 6256 and 6257 [public agencies (both state and local government) have been required to provide “copies or exact copies of public records upon a request that reasonably describes an identifiable record” since the 1968 enactment of CPRA].

<sup>92</sup> Exhibit F, LA County’s Rebuttal Comments, at p. 4.

requests requiring assistance to the requestor in making a focused and effective search.” But LA County still fails to provide any explanation why new technology or equipment is needed, or why new technology or equipment should be reimbursable under this mandate, where, as discussed above, this mandate was meant, at least in part, to be remedial; to correct the failings of local government under prior law to properly receive and respond to public records act requests in a timely manner.

Therefore, the Commission finds that the request for reimbursement for acquiring or developing new technology and equipment is denied, because there is no evidence that these activities are reasonably necessary to implement the limited approved activities in this claim.

#### **4. On-Going Activity: Providing a Copy of a Disclosable Electronic Record**

The test claim statement of decision approved reimbursement for *providing a copy of an electronic record* as follows:

*If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.*<sup>93</sup>

LA County has proposed reimbursement for the following, citing the same code section as authority, as was relied upon in the test claim statement of decision:

*Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).*

- a. *Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.*
- b. *Determining whether the electronic public records request falls within the agency's jurisdiction.*
- c. *Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.*
- d. *Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.*

<sup>93</sup> Exhibit A, Test Claim Statement of Decision, at p. 27 [citing Government Code section 6253.9, as amended by Statutes 2000, chapter 982].

- e. *Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.*
- f. *Processing the requested electronic record(s) or parts thereof that are disclosable.*
- g. *Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*
- h. *Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).*
- i. *Copying or saving electronic record(s) and accompanying correspondence.*
- j. *Sending or transmitting the electronic records to the requestor.*
- k. *Tracking the shipment of requested CPRA electronic records.*<sup>94</sup>

LA County’s proposed reimbursable activities under this heading suggest that “provid[ing] a copy of a disclosable electronic record,” as was approved in the test claim statement of decision, necessarily implies making a determination as to whether the record is disclosable. As the test claim statement of decision explored at length, the making of a determination whether a record or part thereof is disclosable is not new. The test claim statement of decision makes clear that local government claimants would have been required under prior law to determine whether a record is disclosable under statutory and case law exemptions, in order to make a record “open to inspection by every person at all times during the office hours of the local agency and [school district].”<sup>95</sup> The activity of making that determination is no different whether the determination applies to electronic records or physical records. Therefore the activities proposed above are not new. Furthermore, the Commission found in the test claim statement of decision that the process of determining that a portion of a record is exempt from disclosure and redacting the document was not new. The Commission found that “[p]rior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.”<sup>96</sup>

<sup>94</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 6-7.

<sup>95</sup> Exhibit A, Test Claim Statement of Decision, at p. 12, [citing former Government Code section 6253 (Stats. 1968, ch. 1473)].

<sup>96</sup> Exhibit A, Test Claim Statement of Decision, at p. 13 [citing former Government Code section 6257 and *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124].

The activity that was approved, read in context of the test claim analysis, includes only the marginal increase in service to *provide a copy of a disclosable electronic record, in an electronic format requested*, as specified; the activity does not include the determination of whether a record is disclosable, and does not include the provision of a copy of a public record. Any of the activities described above that relate to the making of a determination *whether a record is disclosable* are denied, because that determination was required under prior law, in order to make records available for inspection and to provide copies upon request. In fact, even the 1968 statute required disclosure of electronic data: “[c]omputer data shall be provided in a form determined by the agency.”<sup>97</sup> The inclusion of “computer data,” though vague, expresses the Legislature’s intent that electronic records should receive differential treatment only insofar as the form in which they would be provided, and further reinforces the view, as found in the test claim statement of decision, that determining whether records are disclosable is not new, and therefore not reimbursable, even where the records are in electronic form. Additionally, any of the above activities related to receiving, logging, tracking of requests, or copying, saving, sending, or transmitting the records requested are not new. These activities are either within the scope of providing access to and copies of physical records under the 1968 statute, or they are not within the scope of the amended statute.

In comments submitted in response to the draft staff analysis, Cost Recovery Systems, Inc. (CRS) objects to this view, and argues that the approved activity in the test claim statement of decision includes sending the records, as part of the new program or higher level of service approved. CRS claims that the above analysis contradicts the test claim statement of decision. But CRS’ view can only be supported if the phrase “provide a copy of a disclosable electronic record” is read in isolation, and the remainder of the same sentence, “*in the electronic format requested* if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies,” is ignored, and the analysis of prior law in the test claim statement of decision is forgotten. The finding made in the test claim statement of decision was that providing a copy of a disclosable electronic record in the format requested, as specified, was a new activity. The higher level of service is imposed by expressly requiring disclosure of public records in electronic format, in addition to the physical format, which was required under prior law and so is not reimbursable. The test claim statement of decision analyzed at length what was required under prior law, and in fact makes very plain that the provision of copies or exact copies of identifiable disclosable public records has been required since 1968:

Former Government Code sections 6256 and 6257 provided:

6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.

<sup>97</sup> Former Government Code section 6256 (Stats. 1968, ch. 1473).

6257. A request for a copy of an identifiable public record or information produced therefrom, or certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.<sup>98</sup>

As articulated throughout this analysis, the test claim statement of decision approved only an incremental increase in service: where an electronic format requested is one that the agency has used, the agency must provide the requested records in that format. Provision of the records is not a new activity. Accordingly, “sending” the records, in the electronic format, is not a higher level of service, because physical records too would have to be sent.

The activities requested for reimbursement above, under this heading, are therefore denied. The activity of providing a copy of a disclosable electronic record, in an electronic format requested, exactly as approved in the test claim statement of decision, is included in the parameters and guidelines.

However, the test claim statutes, as interpreted by the courts, imply that the activity of “providing a copy of a disclosable electronic record” may at times be more involved than simply copying, redacting, and emailing a document. Section 6253.9(b) provides, in pertinent part:

[T]he requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

- (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
- (2) The request would require data compilation, extraction, or programming to produce the record.

This section does not impose an explicit mandate to conduct activities related to data compilation, extraction, or programming, or a mandate to provide a copy of a record that is produced only at otherwise regularly scheduled intervals. But the section implies that such activities might from time to time be required. However, the section also provides new fee authority to cover those activities. Furthermore, the Attorney General of California assumes, in a published opinion analyzing section 6253.9, that a request for electronic records might “require data compilation, extraction, or programming to produce the record;” and that in that event the fee authorized under section 6253.9 “may additionally include ‘the cost to construct [the] record, and the cost of programming and computer services necessary to produce a copy of the

<sup>98</sup> Exhibit A, Test Claim Statement of Decision, at p. 14 [citing Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473)].



record.”<sup>99</sup> This comports with the broad definition of “public records,” and the emphasis on the disclosure of “information,” rather than individual documents.<sup>100</sup>

The same interpretation is accorded in *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301. In that case the court found that section 6253.9 permitted the county to charge the requestor fees in excess of the direct cost of duplicating the records, where the county was being asked to produce electronic records “at an unscheduled interval.” The court remanded the case to resolve a factual dispute but first recognized that, if excess costs were shown, the agency may charge “the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record...” pursuant to section 6253.9(b).<sup>101</sup>

The Commission therefore finds that providing a copy of an electronic record may include compiling information from disparate sources, extracting information from larger data sets, or writing computer programs or code to cull information, in order to generate an electronic record. However, the Commission also finds that the test claim statutes provide fee authority to offset the requirement to “provide a copy of a disclosable electronic record in the electronic format requested,” as discussed below, including fee authority to offset the costs of compiling, extracting, or otherwise generating an electronic record. The SCO is authorized to reduce reimbursement for these activities accordingly, as discussed below. The parameters and guidelines contain the following approved activity:

*Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2), Stats. 2000, ch. 982).*

*This activity includes:*

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.*
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.*

*Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining*

<sup>99</sup> Exhibit X, 88 Ops. Cal. Atty. Gen. 153 (2005).

<sup>100</sup> Exhibit A, Test Claim Statement of Decision, at p. 5; Government Code section 6250 (Stats. 1968, ch. 1473) [“access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state”].

<sup>101</sup> *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301, at p. 1337.

*whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.*

*Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.*

LA County has proposed a number of changes to the above activity, including re-inserting language providing for reimbursement of technology and equipment costs, and eliminating the above limitation that reimbursement is not required for the costs of determining whether a request describes reasonably identifiable records and identifying access to those records. The “pro rata costs of purchasing and installing software systems permitting keyword searches” is not supported on the record here; the requirement to provide electronic records in a format requested only applies if the format is one that has been used by the agency to create copies for its own use. There is no requirement that all records be made available electronically. The test claim statute does now require an agency to assist a member of the public in making an effective request, but that still fails to justify a complete overhaul of local government’s recordkeeping, as implied by LA County’s request. The pro rata costs of software systems requested are denied. Each of the remaining changes proposed is discussed in other sections of this analysis, and needs no further explanation here. The proposed changes are not incorporated in the parameters and guidelines.

**5. On-Going Activities: Responding to a Public Records Act Request Within 10 Days With Either a Notice of Disclosure Determination or Notice of Extension; and, Where a Request is Denied, Responding to the Requestor in Writing.**

In the test claim statement of decision the Commission approved reimbursement for three separate activities conducted in response to a public records request, as follows:

*Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)*

*If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)*

¶...¶

*If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)*

These three activities are analyzed together for purposes of these parameters and guidelines, and listed together in section IV.B., because, in practice, they impact one another. Note also that the response made within 10 days need not be in writing. Only a notice of extension of the 10 day time limit, or a determination that the records are exempt from disclosure must be made in writing. Therefore oral or telephone notice must be included as a reimbursable means of compliance for the initial notice of the disclosure determination.

a. Within 10 days, provide notice of the disclosure determination.

With respect to the first activity approved under section 6253, LA County has proposed reimbursement for the following:

*Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).*

- a. *Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10-day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.*
- b. *Determining whether the public record(s) request falls within the agency's jurisdiction.*
- c. *Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.*
- d. *Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.*
- e. *Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.*
- f. *Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.*

- g. *Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*
- h. *Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).*
- i. *Copying or saving record(s) and accompanying correspondence.*
- j. *Sending or transmitting the records to the requestor.*
- k. *Tracking the shipment of requested CPRA records.*<sup>102</sup>

As discussed above, the determination whether a record is disclosable and the provision of copies upon request, are not new activities and so are not reimbursable. The approved newly-mandated activity is to provide notice to the requestor of the determination within 10 days. This is an *incremental* increase in service, and the focus is not *whether the records are disclosable*, as implied by the claimant’s proposed activities, but providing notice to the requestor within 10 days. The plain language of the statute does not impose a requirement to provide the records within 10 days, only to *provide notice* (verbal or written) to the requestor of the determination on the request.

As discussed throughout this analysis, and in the test claim statement of decision, prior law provided for “the right of every person to inspect any public record, with exceptions.”<sup>103</sup> The Commission found, in the test claim statement of decision, that “[s]ince 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure.”<sup>104</sup> The Commission also found that “the general duty to make any reasonably segregable portion of a record available for inspection” was not a new program or higher level of service as compared with prior law.<sup>105</sup> Moreover, the Commission found that, “since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records.”<sup>106</sup> The test claim statement of decision also found that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement. Therefore, the duty to make a determination as to what records or parts of records were exempt from disclosure or prohibited

<sup>102</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 8-9.

<sup>103</sup> Exhibit A, Test Claim Statement of Decision, at p. 10.

<sup>104</sup> Exhibit A, Test Claim Statement of Decision, at p. 12.

<sup>105</sup> Exhibit A, Test Claim Statement of Decision, at pp. 13-14.

<sup>106</sup> *Id.* at p.14. citing former Government Code sections 6256 and 6257 as adopted by Statutes 1968, chapter 1473.

from disclosure is not a new program or higher level of service. Only the requirement to notify the requestor *within 10 days* is new.

Receiving, logging, and tracking public records requests, as well as determining whether the agency has jurisdiction over the request, and whether the request describes reasonably identifiable records, are all requirements of the public records act under prior law. Similarly, identifying access to pertinent records and conducting legal review would have been required under prior law. Processing and reviewing the records for compliance, as well as preparing supervisory approval and signature of correspondence, copying or saving records and correspondence, sending the records, and tracking shipment are all activities that were required, at least in analog, with respect to physical records subject to disclosure under prior law. Therefore, items (a.) through (e.), and (g.) through (k.), above, are either duplicative or not *new* mandated activities, and must be denied.

The Commission finds that item (f.) - *Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination* - reasonably defines the mandate to provide notice to the requestor within 10 days, and this activity is therefore approved.

In its comments submitted in response to the draft staff analysis, CRS proposed altering the approved activity, on the ground that “developing and reviewing language to notify” was ambiguous. CRS suggested applying the same phrasing as the activity of *notifying a requestor when a determination cannot be made within 10 days*, as discussed below.<sup>107</sup> The Commission agrees that the phrase “drafting, editing, and reviewing a written notice,” as applied in that context, is more specific and clear, and the parameters and guidelines will therefore adjust the phrasing suggested by LA County. CRS also proposed allowing for an oral notification, and reimbursing staff time to make that notification. The Commission finds that orally notifying the requestor is within the scope of the approved activity. Finally, CRS proposed reimbursement for obtaining supervisory review and sending the notice to the requestor, as those activities are approved in a similar context below, where the determination cannot be made within 10 days. The Commission finds that obtaining supervisory review and sending the required notice to the requestor are reasonably within the scope of the approved activity, and are not requirements of prior law. The parameters and guidelines reflect this analysis.

Finally, the activity approved for reimbursement in the conclusion of the test claim statement of decision is written vaguely enough to be interpreted as encompassing activities beyond those approved in the body of the analysis, if not read in the context of the analysis, which are beyond the higher level of service imposed by the test claim statute. For this reason, the Commission defines the scope of the approved activity in the parameters and guidelines to appropriately limit reimbursement to the scope of the test claim statement of decision and the higher level of service imposed by the test claim statutes and to exclude reimbursement for requirements of prior law.

<sup>107</sup> Exhibit G, CRS Comments on Draft Staff Analysis, at p. 2.

The parameters and guidelines authorize reimbursement for the following activity:

*Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).*

*This activity includes, where applicable:*

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.*
- 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.*
- 3) Sending or transmitting the notice to the requestor.*
- b. When the 10-day time limit cannot be met due to unusual circumstances, providing notice to the requestor setting forth the reasons for the extension.*

With respect to the second activity approved under section 6253, providing a reason for an extension of time, LA County has proposed reimbursement for the following:

*If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).*

- a. Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(1)-(4)) to determine which are relevant in justifying an extension of the 10-day time limit in providing the requested document(s).*
  - i. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.*
  - ii. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.*
  - iii. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more*

*components of the agency having substantial subject matter interest therein.*

- iv. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.*
- b. Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.*
- c. Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.*
- d. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.*
- e. Copying or saving the extension notice and accompanying correspondence.*
- f. Sending or transmitting the notice and accompanying correspondence to the requestor.*
- g. Tracking delivery of the notice and accompanying correspondence to the requestor.*<sup>108</sup>

The Commission approved, in the test claim statement of decision, reimbursement for “providing written notice” to a requestor when the 10-day time limit must be extended due to unusual circumstances. Based on the intent of the amendments made to CPRA that are the subject of this test claim, this activity should be read as narrowly as possible. The intent and purpose of the amendments to CPRA was to promote access to public records and accountability to the public, and to remedy existing failures in the administration of the CPRA, by providing more specific guidelines for agencies and school districts to respond promptly to public records requests.

Item a. above, restates the “unusual circumstances” that are provided in the test claim statute to justify an extension of time beyond the 10-day time limit, and provides reimbursement for the decisionmaking process of selecting an appropriate justification. The activity approved in the statement of decision is to prepare and send written notice to the requestor when the 10-day time limit cannot be met due to unusual circumstances. The circumstances are enumerated in the code and need not be repeated. Item a. and its sub-parts are therefore denied.

<sup>108</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, at pp. 9-10.

Item b. above is not sufficiently specific. As discussed above, the claimants have not submitted substantial evidence to defend the reasonably necessary activities proposed, and the activity of meeting or conferring with other staff to determine the date on which the determination can be expected is not sufficiently distinguished from item c., “drafting, editing, and reviewing...” Item b. is therefore denied.

Items c. and d. are reasonably within the scope of the mandate. As discussed above, the 10-day time limit is new, and was approved, as was the requirement to inform a requestor when the 10-day time limit must be extended. In the case an extension is necessary, a written notice is due the requestor, identifying the reasons for the extension and the date on which a determination is expected. Items c. and d. include drafting and reviewing that notice, and obtaining the signature of the agency head or his or her designee. These activities are consistent with the mandated activity, are reasonably necessary to comply with the mandated activity, and are therefore approved.

Item e. is denied: there is no requirement to copy or save the notice prepared for the requestor, only to “provide written notice to the person.” It may be a policy of the agencies to save the notice prepared for the requestor, but that activity is not necessary to perform the mandated activity of “providing” written notice.

Item f., to send or transmit the notice, is approved. As discussed above, the requirement to inform the requestor if the 10-day time limit cannot be met is new, and in order to inform the requestor, a written notice must be sent or transmitted. This activity is reasonably within the scope of the approved activity.

Item g. is denied: there is no requirement to track delivery of the written notice or accompanying correspondence.

Items c., d., and f. reasonably describe and explain the process of providing notice to a requestor that the 10-day time limit must be extended, consistently with the activities approved in the test claim statement of decision. These activities are reasonably within the scope of the mandate and are therefore approved.

Thus, the parameters and guidelines authorize reimbursement for the following activity:

*Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).*

*This activity includes, where applicable:*

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.*



- 2) *Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.*
  - 3) *Sending or transmitting the notice to the requestor.*
- c. When a written request is denied, respond in writing.

With respect to the activity approved under section 6255, providing a written response to a written request for inspection or copies of records when the request is denied, LA County has proposed reimbursement for the following:

*If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code § 6255, subd. (b) (Stats. 2000, ch. 982)).*

- a. *Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.*
- b. *Drafting and editing a written response that includes a determination that the request is denied.*
- c. *Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.*
- d. *Copying or saving the written denial response and accompanying correspondence.*
- e. *Copying or saving the denial response and accompanying correspondence.*
- f. *Sending the denial response and accompanying correspondence to the requestor.*
- g. *Tracking delivery of the denial response and accompanying correspondence to the requestor.*<sup>109</sup>

The requirement to provide a written response is new, and was expressly approved in the test claim statement of decision, as provided above. The incremental increase in service here is to *provide the determination in writing*, and not to make the determination, as repeated throughout this analysis. LA County, in its comments filed in response to the draft staff analysis, argues that staff inappropriately denied reimbursement for “all legal services,” and that “the Commission’s [test claim statement of] decision does not deny reimbursement for all legal services.” LA County argues that the test claim statement of decision “only denies reimbursement for legal

<sup>109</sup> Exhibit C, LA County’s Proposed Parameters and Guidelines, at p. 12.

service when performed to determine whether the requested records are disclosable.”<sup>110</sup> The Commission agrees that the test claim statement of decision denied legal research and review to determine whether a record is disclosable, and throughout this analysis the same approach is adopted. LA County cites to the Commission’s hearing on the test claim, in which Commissioner Alex stated, “...the idea that you need some legal advice on how to proceed initially is pretty clear.”<sup>111</sup> It is not clear, from the county’s reliance on this off-hand remark, or from the comments on the draft staff analysis, exactly what sort of legal services the county proposes for reimbursement. If the “legal advice on how to proceed initially” is encompassed in the training of existing employees and the development of policies and procedures with respect to the activities approved by the Commission, those activities are approved above. If the county proposes any other legal services or advice for reimbursement, those activities must be distinguished from legal review regarding disclosure. It is not the Commission’s purview to assume or otherwise guess the activities for which claimants might wish to claim reimbursement; a successful claimant must describe the activities for which reimbursement is sought with some particularity. The Commission holds to the test claim analysis, finding that legal review for purposes of determining whether requested records are disclosable is not reimbursable. However, the Commission does recognize that a denial of a request under CPRA may lead to litigation. Therefore review of the language in the written notice by an agency’s legal staff may be necessary, and is reasonably within the scope of providing a written notice when a request is denied.

Additionally, as discussed above in similar context, drafting and editing a response, obtaining approval and signature of the denial response, and sending the response are also within the scope of the approved activity.

Item d. is not required: there is no requirement to copy or save the denial response, and no consequence for failure to do so; it may be a policy of the agencies to save denial responses, but it is not required by the statute. Item e. is duplicative, and is not required, and is therefore denied. Item g. is not established as necessary; there would seem to be no consequence in the test claim statute for failing to track delivery of a denial response.

The parameters and guidelines identify the following activities for reimbursement:

*Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982)).*

*This activity includes, where applicable:*

<sup>110</sup> Exhibit H, LA County Comments on Draft Staff Analysis.

<sup>111</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis, at p. 1.

- 1) *Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the denial are not reimbursable.*
- 2) *Obtaining agency head, or his or her designee, approval and signature of the notice of determination.*
- 3) *Sending or transmitting the notice to the requestor.*
- d. Limiting language applicable to these three activities.

The three activities described under section 4., above, providing notice of the disclosure determination in response to a public records act request within 10 days; providing notice of an extension when the 10-day time limit cannot be met; and, where a request is denied, responding to the requestor in writing; are all limited by the same prior law requirements. Prior law required a determination regarding whether records were disclosable; prior law required receiving and processing public records requests; prior law required determining whether records were within the jurisdiction and possession of the agency; and prior law required sending or transmitting the records, if the request was granted. Therefore, the following limits on reimbursement are included in the parameters and guidelines after activity c.:

*Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.*

#### **6. On-Going Activity: Assisting the Public in Making Effective Records Requests**

The test claim statement of decision approved reimbursement for the following:

*When a member of the public requests to inspect a public record or obtain a copy of a public record:*

- a. *Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;*
- b. *Describe the information technology and physical location in which the records exist; and*
- c. *Provide suggestions for overcoming any practical basis for denying access to the records or information sought.*

*These activities are not reimbursable when:*

- *The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;*
- *The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or*
- *The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).<sup>112</sup>*

LA County has proposed reimbursement for the following:

*When a member of the public requests to inspect a public record or obtain a copy of a public record:*

- assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;*
- describe the information technology and physical location in which the records exist; and*
- provide suggestions for overcoming any practical basis for denying access to the records or information sought.*

*To implement Sections (9) a., b., c. (above):*

- Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.*
- Determining whether the public record(s) request falls within the agency's jurisdiction.*
- Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.*
- Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.*
- Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are*

<sup>112</sup> Exhibit A, Test Claim Statement of Decision, at p. 28.

*subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.*

- (vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.*
- (vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.*
- (viii) Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*
- (ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).*
- (x) Copying or saving record(s) and accompanying correspondence.*
- (xi) Sending or transmitting the records to the requestor.*

*These activities are not reimbursable when:*

- 1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;*
- 2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or*
- 3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subs. (a) and (d) (Stats. 2001, ch. 355)).<sup>113</sup>*

In its comments on the draft staff analysis, LA County proposed isolating public records requests that require assistance to the requestor, and treating them differently from all other requests, ensuring that such requests are fully reimbursable, including activities specifically denied in the test claim decision if assistance to the requestor is involved. For example, where staff recommended approving reimbursement for *providing a copy of a disclosable electronic record in an electronic format*, as discussed above, staff also recommended the following limitation:

*This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act*

<sup>113</sup> Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 10-12.

*requests; tracking requests; processing requests; determining whether a request describes reasonably identifiable records and identifying access to those records; retrieving records, or sending the records to the requestor.*

LA County proposed to add, and to strike, the following language:

*This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests not requiring assistance to the requestor in making a focused and effective search; tracking requests not requiring assistance to the requestor in making a focused and effective search; processing requests not requiring assistance to the requestor in making a focused and effective search.*

Similar language, if not identical, is proposed for a number of other activities in the proposed parameters and guidelines, including the activity of providing assistance to the public in making effective public records act requests, as discussed in this section.<sup>114</sup> Other than the three declarations discussed above, which contain nothing more than bare assertion, LA County has submitted no evidence or explanation that would justify reimbursement for receipt of a records request that requires assistance to the requestor; or for tracking and processing such a request. The higher level of service approved is *to provide assistance to the public in making an effective records request*; there is no implication that handling the records request, once made, is a new program or higher level of service. The underlying prior law requirements to provide access to disclosable records, and to provide copies or exact copies, as discussed above, apply with equal force to public records act requests that require assistance to the requestor.<sup>115</sup> There is no evidence that tracking or processing a request is necessary, or if necessary, that tracking and processing are not requirements of prior law; and, receipt of records requests is clearly not new, as discussed throughout this analysis. The declarations submitted state that these activities are necessary to provide the records in a timely and cost-efficient manner, but there is nothing in the language of the statute, or implied by the test claim statute or any of the test claim findings that would justify reimbursement for activities that are either not new, or not required. Providing the records in a timely manner was always a requirement;<sup>116</sup> it was simply not adequately implemented. Moreover, cost-efficiency is not a requirement of CPRA; there is no suggestion that cost should be a factor in refusing disclosure, or that the state has any interest in making the CPRA requirements inexpensive for local government; the focus has always been on the public's

<sup>114</sup> See e.g., Exhibit H, LA County's Comments on Draft Staff Analysis, at pp. 8; 9; 11.

<sup>115</sup> Former Government Code sections 6253; 6256; 6257 (Stats. 1968, ch. 1473).

<sup>116</sup> Former Government Code section 6253 required records to be open to inspection during regular business hours; this implies that records should be made available on demand.

right to access information.<sup>117</sup> The language that LA County proposes to add must be denied. The language that LA County proposes to strike is addressed below.

Proposed reimbursable activities (i) and (ii) above – receiving public records requests and determining whether the request is within the agency’s jurisdiction – are not new. As discussed throughout this analysis, agencies had a duty under prior law to receive public records requests; and the duty to determine whether the request is within the agency’s jurisdiction is implied from the duty to determine whether a record is disclosable.<sup>118</sup> Similarly, activities (iv), (v), (vii), and (viii), above, restate the legal review that would be required under prior law pursuant to the requirement to make all public records available, subject to exemptions. Items (iv) and (v) describe the process of identifying access to requested records and reviewing for disclosable material (i.e., reviewing for exemptions from disclosure), and items (vii) and (viii) describe the making of the disclosure determination and the review of that determination. All four of these activities were required under prior law, and none relate to or explain the activity of assisting the public with an effective records request. Item (ix) is duplicative, and does not relate to or explain the activity of assisting the public in making an effective request. Items (ix) and (x) are not required activities, where public records are to be disclosed: an agency head is only required to sign a determination that records will not be disclosed, or a notice of extension of the time limit. And there is no requirement to copy or save records and accompanying correspondence; the requirement is merely to send the records. Thus, the activity to copy or save records is not reasonably necessary to implement the mandate to “send” the records. Item (xi) is required, but is not new: disclosable records would have to be sent or transmitted under prior law as well.

The requirement that local agencies and school districts must assist members of the public in making an effective public records act request is new, as approved in the test claim statement of decision, but is only an incremental increase in service, as discussed in similar context above. Therefore, items (i), (ii), (iv), (v), (vii), (viii), (ix), (x), and (xi) are not reasonably necessary to comply with the incremental increase in service.

Activity (vi) “Identifying litigation, claims, and related record(s)” is narrower than the requirement the test claim statute (which requires “identifying records and information which may be disclosable and may be responsive...”) <sup>119</sup> and is redundant. Therefore, it is denied as written. The intent of placing the burden on the agency to assist the public in making an effective records request necessarily includes identifying records and information which “may be

<sup>117</sup> See Former Government Code section 6250 (Stats. 1968, ch. 1473) [“In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every citizen of this state.”].

<sup>118</sup> See Exhibit X, Government Code 6253 (Stats. 1968, ch. 1473).

<sup>119</sup> Government Code section 6253.1 (Stats. 2001, ch. 355 (AB 1014)).

disclosable and may be responsive to the request or to the purpose of the request.” The intent of the statutory change, and the activity approved in the test claim statement of decision, is to require an agency to interpret a request generously, with a bias toward identifying all relevant information. However, this activity does not include determining whether such relevant information is disclosable, since that activity is not new and was specifically denied in the test claim statement of decision,

Thus, of the above activities, only a portion of activity (iii), “[d]etermining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed,” is reasonably within the scope of the approved activity of assisting the public. Activity (iii), is therefore partially approved: “conferring with the requestor” for clarification is implied by the statutory change and the activity as approved in the test claim statement of decision. But “[d]etermining whether the request reasonably describes any identifiable records(s)” is not new; this is an essential part of providing access to or copies of disclosable public records, as required under provisions of CPRA dating back to 1968.<sup>120</sup> In light of this long-standing requirement of prior law, in many of the approved activities in the draft proposed parameters and guidelines, staff recommended including the following limiting language:

*Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records...*

In each activity to which this limiting language was applied, LA County proposed striking the phrase “determining whether the request describes reasonably identifiable records, [and] identifying access to records...” LA County did not explain this proposed change, other than to reiterate, in each of the three *new declarations*, that “I declare on information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services *except for the changes I recommend which are found (highlighted) in Attachment A.*”<sup>121</sup> As discussed in this section, determining whether a request describes reasonably identifiable records is not new. And, as discussed above, the declarations indicate no consideration of prior law, and therefore cannot be relied upon in conducting a mandates analysis. The limitation on reimbursement is left intact in the proposed parameters and guidelines, including the approved activity of assisting the public; LA County’s proposed changes are denied.

<sup>120</sup> Former Government Code section 6256 (Stats. 1968, ch. 1473) [“Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein.”].

<sup>121</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 2-4.



The Commission finds that activity (iii), above, is partially approved. The parameters and guidelines authorize reimbursement for the following activities:

*When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.*

*This activity includes:*

- i. Conferring with the requestor if clarification is needed to identify records requested.*
- ii. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.*
- iii. Providing suggestions for overcoming any practical basis for denying access to the records or information sought.*

*These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).*

*In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review, processing the records, obtaining supervisory review, sending the records, or tracking the records.*

**7. On-Going Activity: Redaction and Removal of Home Addresses and Telephone Numbers Upon Request, for K-12 School Districts Only.**

The remaining activities approved in the parameters and guidelines for Government Code section 6254.3 are those affecting only school districts, and are approved as written in the test claim statement of decision, with only slight reorganization. Those activities are, in summary, to “redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information,” and to “remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of

education to contact the employee.”<sup>122</sup> The Commission approves these activities, as stated in the test claim statement of decision, without substantial analysis.

### **8. Time Studies**

In the revised proposed parameters and guidelines LA County proposed allowing actual cost claiming by way of time studies. Staff did not include this language in the draft parameters and guidelines because it was not addressed in the claimant’s narrative, and the Commission’s boilerplate language does not normally include provision for time studies.

In its comments on the draft staff analysis, LA County has requested inclusion of language in the parameters and guidelines authorizing claiming through time studies.<sup>123</sup> The language requested by LA County is not justified on the record, but the following is inserted in the parameters and guidelines, recognizing that time studies are a claiming tool that has been approved in prior test claims:

*Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller’s Office.*

### **D. Offsetting Revenues (Section VII. of Parameters and Guidelines)**

In adopting parameters and guidelines, the Commission is required by Government Code section 17557 to determine the “amount to be subvended” under the Constitution. Specifically, the Commission’s regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

- i. Dedicated state and federal funds appropriated for this program
- ii. Non-local agency funds dedicated for this program.
- iii. Local agency’s general purpose funds for this program.
- iv. Fee authority to offset partial costs of this program.<sup>124</sup>

The SCO has the authority to reduce reimbursement to an eligible claimant, to the extent of fee authority created by the test claim statute (or another provision), which must in turn be identified in the parameters and guidelines. A reduction in this manner is consistent with Article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues.<sup>125</sup>

<sup>122</sup> Exhibit A, Test Claim Statement of Decision, at p. 27.

<sup>123</sup> Exhibit H, LA County’s Comments on Draft Staff Analysis, at pp. 12-13.

<sup>124</sup> Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36).

<sup>125</sup> *County of Fresno, supra*, 53 Cal.3d at p. 487.

Thus, fee authority given to local government agencies and school districts that *can* be used for costs of a mandated program is required to be identified as a source of offsetting revenues in the parameters and guidelines, and required to be offset against costs claimed, to the extent of the authority. Fee authority granted by the Legislature provides a mechanism by which funds other than local tax revenues can be used for costs of the program. A claimant is not in need of the protection offered by article XIII B, section 6, to the extent of the revenues that can be raised by authorized fees, and cannot show increased costs mandated by the state, consistently with sections 17556(d) and 17514, to the extent of the fee authority granted.

**1. Some special districts have potential offsetting revenues that pay for the program.**

In 1978, after article XIII A was adopted by the voters through Proposition 13, the Legislature enacted Government Code section 16270 to state its intent that special districts with authority to charge fees should rely on the fees and charges for raising revenue due to the lack of availability of property tax revenue after the 1978-79 fiscal year.

The Legislature finds and declares that many special districts have the ability to raise revenue through use charges and fees and that the ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIII A of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenues after the 1978-79 fiscal year. Such districts are encouraged to begin the transition to user fees and charges during the 1978-79 fiscal year.

Thus, special districts, generally eligible to claim reimbursement because they are subject to the tax and spend limitations of the Constitution, may still have the authority to charge fees and assessments that pay for the mandated program and not be entitled to mandate reimbursement. If fee revenue is used by the district to pay for general administration costs of the district, including the expenses to comply with the CPRA program, then reimbursement is not required in that case.

An example is highlighted in a report issued in May 2000 by the Little Hoover Commission entitled “Special Districts: Relics of the Past or Resources for the Future.”<sup>126</sup> The report, beginning on page 67, discusses enterprise special districts that have the authority to charge fees and assessments for their services, but also collect property tax revenue. The report indicates that in fiscal year 1996-1997, enterprise districts received \$421 million in property tax revenue, and a sizable portion of that revenue (more than \$100 million) went to 15 enterprise districts. Page 70 of the report highlights three special districts that used all of their property tax revenue in fiscal year 1996-1997 to pay for debt service and capital projects. Under these circumstances,

<sup>126</sup> Little Hoover Commission, *Special Districts: Relics of the Past or Resources for the Future*,” (<http://www.lhc.ca.gov/studies/155/report155.pdf>)

then, the remaining expenses of the district, including the cost of compliance with the *CPRA*, would be paid through revenue collected from fees and reimbursement would not be required.

Thus, the boilerplate language in Section VII of the parameters and guidelines addressing offsetting revenue states the following:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees or assessments; federal funds; and other state funds; any of which fund the cost of the mandated activities, shall be identified and deducted from this claim.

**2. Fee authority in Government Code sections 6253 and 6253.9.**

In addition, the fee authority found in Government Code sections 6253 and 6253.9 must be identified in the parameters and guidelines, and the SCO may reduce reimbursement to the extent of direct costs that are permissible subjects of the fees.

Government Code section 6253 provides, in pertinent part:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person *upon payment of fees covering direct costs of duplication*, or a statutory fee if applicable.<sup>127</sup>

Section 6253.9 provides, in pertinent part:

(a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. *The cost of duplication*

<sup>127</sup> Government Code section 6253 (Stats. 1998, ch. 620 (SB 143); Stats. 1999, ch. 83 (SB 966); Stats. 2000, ch. 982 (AB 2799); Stats. 2001, ch. 355 (AB 1014)) [derived from former Government Code section 6257 (Stats. 1981, ch. 968)].

*shall be limited to the direct cost of producing a copy of a record in an electronic format.*

(b) Notwithstanding paragraph (2) of subdivision (a), *the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:*

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.<sup>128</sup>

Section 6253, above, provides that agencies shall make disclosable records “promptly available to any person upon payment of fees covering *direct costs of duplication*,” or statutorily defined fees, where applicable. Section 6253.9(a)(2), above states that the costs of duplication generally must be limited to direct costs of producing copies. This would include, for example, the cost of a flash drive. Subdivision (b) provides that “the requester shall bear the cost of producing a copy of the record,” if the agency is compelled to produce the record other than at the regularly scheduled time, or if the request requires data compilation, extraction, or programming.

In the context of paper records, the courts have held that “[t]he direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it.” The courts contend that direct cost “does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted.”<sup>129</sup> In the context of electronic records, “the statute allows an agency to recover specified ancillary costs in either of two cases: (1) when it must ‘produce a copy of an electronic record’ between ‘regularly scheduled intervals’ of production, or (2) when compliance with the request for an electronic record ‘would require data compilation, extraction, or programming to produce the record.’” The court in *County of Santa Clara* held that pursuant to section 6253.9, “[u]nder those circumstances, the agency may charge ‘the cost [of staff] to construct a record, and the cost of programming and computer services necessary to produce a copy of the record ....’”<sup>130</sup>

In this test claim, reimbursement is required for the increased level of service mandated by providing a copy of an electronic record, which the court in *Santa Clara* recognizes may at times

<sup>128</sup> Government Code section 6253.9 (added by Stats. 2000, ch. 982 (AB 2799)).

<sup>129</sup> Exhibit X, *North County Parents Organization v. Department of Education (North County)* (Cal. Ct. App. 4th Dist. 1994) 23 Cal.App.4th 144, at p. 148.

<sup>130</sup> Exhibit X, *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301, at p. 1336.

require “data compilation, extraction, or programming.” The fee authority under sections 6253 and 6253.9(a), as discussed, extends to the *direct costs* of providing copies of disclosable public records, and may not be applied to cover the costs of retrieving records to comply with a request. And the fee authority found in section 6253.9(b) also extends to the costs of programming, extraction, and compiling required to construct a record.

Based on the courts’ interpretation of sections 6253 and 6253.9, the Commission finds that the test claim statutes provide fee authority to offset the direct costs of “provid[ing] a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.”<sup>131</sup> The Commission also finds fee authority for the costs of staff “construct[ing] a record, and the cost of programming and computer services necessary to produce a copy of the record,” when “the record is one that is produced only at otherwise regularly scheduled intervals...[or]... would require data compilation, extraction, or programming to produce the record.”<sup>132</sup>

The remaining activities required under the test claim statutes, including responding in writing to public records requests within 10 days, assisting the public in making effective public records requests, and redacting employees’ home addresses and phone numbers, are not permissible subjects of the identified fee authority. The parameters and guidelines reflect this analysis.

In comments on the draft staff analysis, DOF suggested a small, non-substantive change to the language recommended by staff regarding fee authority. Rather than focusing on the records requested, as was the case in the test claim statement of decision and the case law on point, DOF’s version focuses on the request, and what is required to satisfy the request. The Commission finds that DOF’s proposed language has the same substantive effect as the language recommended in the draft proposed parameters and guidelines, and focuses more clearly on the request, rather than the records requested.<sup>133</sup> DOF’s proposed language is therefore incorporated in the parameters and guidelines, as follows:

*Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:*

- 1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and*
- 2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at*

<sup>131</sup> Exhibit A, Test Claim Statement of Decision, at p. 27.

<sup>132</sup> Government Code section 6253.9 (Stats. 2000, ch. 982 (AB 2799)).

<sup>133</sup> Exhibit I, DOF Comments on Draft Staff Analysis.

*regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.*

**V. CONCLUSION**

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities approved, as analyzed above.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

Case No.: 02-TC-10 and 02-TC-51

*California Public Records Act*

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

*(Adopted April 19, 2013)*

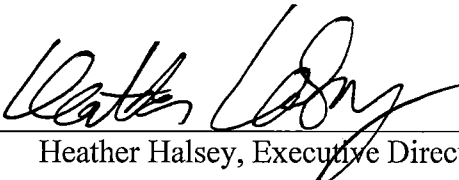
*(Served April 25, 2013)*

*(Corrected July 26, 2013)*

*(Served August 2, 2013)*

**PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached corrected parameters and guidelines on July 26, 2013.

  
Heather Halsey, Executive Director



## **PARAMETERS AND GUIDELINES**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982  
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

*California Public Records Act*

02-TC-10 and 02-TC-51

Period of reimbursement begins on July 1, 2001, or later for specified activities  
added by subsequent statutes

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

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities which impose an incremental increase in the level of service required under prior law:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).
2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the determination regarding whether the records are disclosable and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
4. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)
5. When a member of the public requests to inspect a public record or obtain a copy of a public record:
  - a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

- b. Describe the information technology and physical location in which the records exist; and
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
  - The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
  - The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).
6. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
- a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.
- This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)
- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

## **II. ELIGIBLE CLAIMANTS**

Any city; county; city and county; special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes; or any "school district" as defined in Government Code

section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code § 17560(b)).
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

**A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

**B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
  - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
- 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
- 3) Sending or transmitting the notice to the requestor.

- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
- 3) Sending or transmitting the notice to the requestor.

- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.

3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
- a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee

organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### **1. Salaries and Benefits**

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

#### **2. Materials and Supplies**

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

#### **3. Contracted Services**

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

claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets

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

#### 5. Travel

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

#### 6. Training

The cost of training each employee to perform the mandated activities is eligible for reimbursement as a one time cost. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, and per diem.

### B. Indirect Cost Rates

Indirect costs are costs that have been incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

#### For local agency claimants:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).



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

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

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

For school district claimants:

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

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

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5 (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees or assessments,; federal funds; and other state funds; any of which fund the cost of the mandated activities, shall be identified and deducted from this claim.

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and
2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.



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

**RECEIVED**  
 February 17, 2015  
 Commission on  
 State Mandates

February 17, 2015

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

Re: Mandate Redetermination Request, 14-MR-02  
California Public Records Act (02-TC-10 and 02-TC-51)  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office concurs with the Department of Finance's request to adopt a new test claim decision to supersede the Statement of Decision adopted on May 26, 2011 for the above-named program.

Proposition 42, California Compliance of Local Agencies with Public Act, approved on the June 3, 2014 ballot amended the California Constitution, adding Section 3 (b)(7) under Article 1, and Section 6 (a)(4) under Article XIII B. This measure requires local agencies and K-14 school districts to comply with specific state laws providing for public access to meetings of local government bodies and records of government officials. Thus, it eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.

Should you have any questions regarding these matters, please contact Steve Purser at (916) 324-5729 or email [spurser@sco.ca.gov](mailto:spurser@sco.ca.gov).

Sincerely,

JAY LAL, Manager  
 Local Reimbursements Section

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On February 18, 2015, I served the:

**State Controller's Office Comments**

Mandate Redetermination Request, 14-MR-02

*California Public Records Act (02-TC-10 and 02-TC-51)*

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

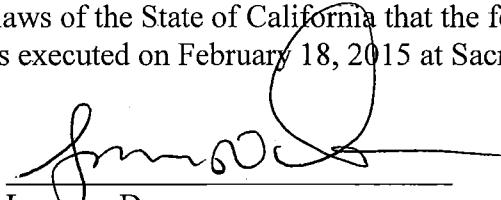
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355

As Alleged to be Modified by Proposition 42, adopted June 3, 2014

California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 18, 2015 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

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

**Claim Number:** 14-MR-02

**Matter:** California Public Records Act (02-TC-10 and 02-TC-51)

**Requester:** Department of Finance

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

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April 3, 2015

Ms. Evelyn Suess  
Department of Finance  
Local Government Unit  
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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Draft Proposed Decision, Scheduled for Comments, and Notice of Hearing**  
Mandate Redetermination Request, 14-MR-02  
*California Public Records Act (02-TC-10 and 02-TC-51)*  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

Dear Ms. Suess:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

### Written Comments


Written comments may be filed on the draft proposed decision by **April 24, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

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

### Hearing

This matter is set for hearing on **Friday, May 29, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 15, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

  
Heather Halsey  
Executive Director

**ITEM \_\_**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**DRAFT PROPOSED DECISION**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);  
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:  
Proposition 42, Primary Election, June 3, 2014

*California Public Records Act (02-TC-10 and 02-TC-51)*

14-MR-02

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act (CPRA)* test claim decision, 02-TC-10 and 02-TC-51, approving reimbursement for activities related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.

The mandate redetermination request in this matter is based upon changes in law made by Proposition 42. On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”<sup>1</sup> The proposition amended Section 6(a) of Article XIII B of the California Constitution, adding paragraph 4, to provide “that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”<sup>2</sup>

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that

<sup>1</sup> Exhibit X, Text of Proposition 42, at p. 42. Excerpt from [insert name of publication].

<sup>2</sup> Exhibit X, Text of Proposition 42, at p. 43.

contains findings demonstrating that the statutory enactment furthers the purposes of this section.<sup>3</sup>

### **Procedural History**

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the *CPRA* test claim, 02-TC-10 and 02-TC-51.<sup>4</sup> Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.”<sup>5</sup> On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.

### **Commission Responsibilities**

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>6</sup>

The regulations further state:

If the Commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.<sup>7</sup>

Therefore, the sole issue before the Commission at this first hearing is whether Finance, as the requester, has made an adequate showing that the state’s liability has been modified pursuant to a subsequent change in law, as defined in section 17570.

<sup>3</sup> Article I, section 3(b), paragraph 7 (added June 3, 2014).

<sup>4</sup> Exhibit A, Request for Redetermination, at p. 1.

<sup>5</sup> Based on the January 21, 2015 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2014.

<sup>6</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>7</sup> Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

### **Staff Analysis**

Staff finds that Finance has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *CPRA* mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added and paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declares that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the request for a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for July 24, 2015.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed statement of decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:  
FIRST HEARING: ADEQUATE SHOWING  
ON:

Government Code Sections 6253, 6253.1,  
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);  
Statutes 2000, Chapter 982 (AB 2799); and  
Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:

Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By the Department of Finance, Requester.

Case No.: 14-MR-02

*California Public Records Act (02-TC-10  
and 02-TC-51)*

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

*(Adopted May 29, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on May 29, 2015. [Witness list will be included in the adopted decision.]

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

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

**Summary of Findings**

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *California Public Records Act (CPRA)*, 02-TC-10 and 02-TC-51 mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added and paragraph 4 to article XIII B, section 6(a) of the California Constitution which, together with article I, section 3(b), paragraph 7, expressly declares that activities under

Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

## COMMISSION FINDINGS

### I. Chronology

- 5/26/2011 The Commission adopted the test claim statement of decision.<sup>8</sup>
- 4/19/2013 The Commission adopted the parameters and guidelines.<sup>9</sup>
- 6/3/2014 The voters adopted Proposition 42, which added article I, section 3(b), paragraph 7 and article XIII B, section 6, paragraph 4 to the California Constitution.<sup>10</sup>
- 1/21/2015 Finance filed a request for redetermination on *California Public Records Act*, 02-TC-10 and 02-TC-51.<sup>11</sup>
- 2/17/2015 The State Controller's Office (Controller) submitted written comments on the redetermination request.<sup>12</sup>
- 4/3/2015 Commission staff issued the draft proposed decision for the first hearing on the request.

### II. Background

#### The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee's home address and home telephone number from any mailing list maintained by

<sup>8</sup> Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

<sup>9</sup> Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

<sup>10</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

<sup>11</sup> Exhibit A, Request for Redetermination.

<sup>12</sup> Exhibit D, Controller's Comments on Request for Redetermination.

the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.<sup>13</sup>

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

**A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

**B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)). This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

<sup>13</sup> See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:

- a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
- 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
- 3) Sending or transmitting the notice to the requestor.

- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to “unusual circumstances” as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
- 3) Sending or transmitting the notice to the requestor.

- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency’s jurisdiction, determining



whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
  - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a

health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

- b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

### The Alleged Subsequent Change in Law

Proposition 42, adopted by the voters on June 3, 2014, added paragraph 4 to article XIII B, section 6 which states that “. . . the Legislature may, but need not provide subvention for . . . (4)Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3(b) of article I.”

Additionally, the Proposition added article I, section 3(b), paragraph 7 to the California Constitution which provides:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”<sup>14</sup>

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

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a

<sup>14</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

“subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>15</sup>

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>16</sup>

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.<sup>17</sup>

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

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

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.<sup>18</sup>

#### **B. State Controller**

The Controller states that it “concur[s] with the Department of Finance’s request to adopt a new test claim decision” for the California Public Records Act test claim since Proposition 42 “requires local agencies and K-14 school districts to comply with specific state laws providing for public access to meetings of local government bodies and records of government officials.”<sup>19</sup>

<sup>15</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>16</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>17</sup> California Code of Regulations, Title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

<sup>18</sup> Exhibit A, Request for Redetermination, at p. 1.

<sup>19</sup> Exhibit D, Controller’s Comments on Request for Redetermination.

#### **IV. Discussion**

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission's regulations, only whether the requester has made an adequate showing that the state's liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether the request, when considered in light of all of the written comments and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing."<sup>20</sup> A thorough mandates analysis to determine whether and to what extent the state's liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

##### **A. Proposition 42 Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.**

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes "amendments to Section 6 of article XIII B of the California Constitution."<sup>21</sup> Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

"Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

<sup>20</sup> Code of Regulations, Title 2, section 1190.5 (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

<sup>21</sup> Government Code section 17570(a)(1).

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for *CPRA*, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, Article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

**B. The Requester Has Made an Adequate Showing that the State’s Liability Has Been Modified Based on a Subsequent Change in Law.**

At this hearing the Commission is required to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>22</sup> If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.<sup>23</sup>

Since all of the code sections found to impose mandated activities in *CPRA*, 02-TC-10 and 02-TC-51 are within Chapter 3.5, with which local governments are required to comply pursuant to Article I, section 3(b), paragraph 7, and which is exempted from the subvention requirement by the plain language of XIII B section 6(a) paragraph 4, the Commission finds that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

<sup>22</sup> Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).

<sup>23</sup> Government Code section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).

## **V. Conclusion**

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state's liability has been modified based on a subsequent change in law. The Commission hereby directs Commission staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the Commission's previously adopted test claim decision on *CPRA*, 02-TC-10 and 02-TC-51.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On April 3, 2015, I served the:

**Draft Proposed Decision, Scheduled for Comments, and Notice of Hearing**  
Mandate Redetermination Request, 14-MR-02  
*California Public Records Act (02-TC-10 and 02-TC-51)*  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 3, 2015 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/2/15

**Claim Number:** 14-MR-02

**Matter:** California Public Records Act (02-TC-10 and 02-TC-51)

**Requester:** Department of Finance

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

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

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RECEIVED  
April 23, 2015  
Commission on  
State Mandates

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

April 23, 2015

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

Re: Mandate Redetermination Request, 14-MR-02  
California Public Records Act (02-TC-10 and 02-TC-51)  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office has no comments on the draft proposed decision for the California Public Records Act program.

Should you have any questions regarding the above, please contact Steve Purser at (916) 324-5729 or e-mail [spurser@sco.ca.gov](mailto:spurser@sco.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Lal", written over a horizontal line.

JAY LAL, Manager  
Local Reimbursements Section  
Division of Accounting and Reporting

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On April 23, 2015, I served the:

**SCO Comments**

Mandate Redetermination Request, 14-MR-02

*California Public Records Act (02-TC-10 and 02-TC-51)*

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

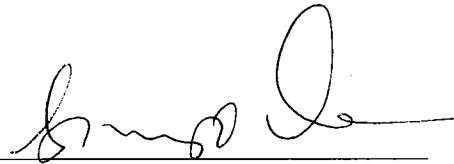
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355

As Alleged to be Modified by Proposition 42, adopted June 3, 2014

California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 23, 2015 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/20/15

**Claim Number:** 14-MR-02

**Matter:** California Public Records Act (02-TC-10 and 02-TC-51)

**Requester:** Department of Finance

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

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## COMMISSION ON STATE MANDATES

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May 29, 2015

Ms. Evelyn Suess  
 Department of Finance  
 Local Government Unit  
 915 L Street  
 Sacramento, CA 95814

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

Re: **Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**  
 Mandate Redetermination Request, 14-MR-02  
*California Public Records Act (02-TC-10 and 02-TC-51)*  
 Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
 Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
 As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
 California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

**Written Comments on Second Hearing Draft Proposed Decision**

Written comments may be filed on the draft proposed decision by **June 19, 2015**. The draft proposed decision is set for hearing on **July 24, 2015**.

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

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **July 24, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **June 19, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

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

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your

Ms. Evelyn Sues  
May 29, 2015  
Page 2

documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

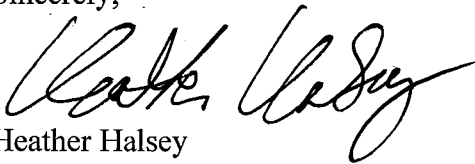
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### Hearing

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey  
Executive Director

**ITEM \_\_**  
**MANDATE REDETERMINATION**  
**SECOND HEARING: NEW TEST CLAIM DECISION**  
**DRAFT PROPOSED DECISION**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);  
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:  
Proposition 42, Primary Election, June 3, 2014

*California Public Records Act (02-TC-10 and 02-TC-51)*

14-MR-02

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act (CPRA)* test claim decisions, 02-TC-10 and 02-TC-51, program. Specifically, the Commission found that Statutes 1992, Chapters 463, Statutes 2000, Chapter 982, and Statutes 2001, Chapter 355 amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 of the Government Code, resulting in an increased level of service related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.<sup>1</sup>

Parameters and guidelines were adopted on April 19, 2013, authorizing reimbursement for the following activities:<sup>2</sup>

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats;  
and

<sup>1</sup> Exhibit B, Test Claim Statement of Decision 02-TC-10 & 02-TC-51, adopted May 26, 2011.

- Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.<sup>3</sup>

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”<sup>4</sup> The proposition amended article XIII B, section 6, of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."<sup>5</sup>

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

### **Procedural History**

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim, 02-TC-10 and 02-TC-51.<sup>6</sup> Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.” On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.<sup>7</sup> On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing.<sup>8</sup> On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.<sup>9</sup>

On May 29, 2015, the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim

<sup>3</sup> Exhibit C, Parameters and Guidelines, adopted April 19, 2013, p. 1.

<sup>4</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.

<sup>5</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.

<sup>6</sup> Exhibit A, Request for Redetermination, p. 1.

<sup>7</sup> Exhibit D, Controller’s Comments on Request for Redetermination.

<sup>8</sup> Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

<sup>9</sup> Exhibit F, State Controller’s Comments on Draft Proposed Decision filed April 23, 2015.

decision. On May 29, 2015, Commission staff issued the draft proposed decision and draft expedited parameters and guidelines for the second hearing.

### **Commission Responsibilities**

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>10</sup>

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.<sup>11</sup>

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

### **Staff Analysis**

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended article XIII B, section 6(a) of the California Constitution, by adding paragraph 4, to the list of mandates exempt from reimbursement under the Constitution, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

<sup>10</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>11</sup> Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

Article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7.

Therefore, article XIII B, section 6(a) paragraph 4 of the California Constitution as amended June 3, 2014 specifically exempts California Public Records Act from the subvention requirement.

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law...<sup>12</sup>

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement comes. Moreover, it expressly declares that activities under, Article I, section 3(b), paragraph 7, which include Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code), are not reimbursable state mandates under article XIII B, section 6. Therefore, pursuant to section 17514, the costs for the California Public Records Act (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not costs mandated by the state within the meaning of article XIII B section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4 is June 4, 2014, the day after the election at which Proposition 42

<sup>12</sup> Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).

was approved.<sup>13</sup> Therefore, as a result of this proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.<sup>14</sup>

Based on the foregoing, staff finds the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 4, 2014.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning June 4, 2014.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

<sup>13</sup> See Exhibit X, Text of Proposed Law, section 5.

<sup>14</sup> California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

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

Government Code Sections 6253, 6253.1,  
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);  
Statutes 2000, Chapter 982 (AB 2799); and  
Statutes 2001, Chapter 355 (AB 1014)

*California Public Records Act*, 02-TC-10 and  
02-TC-51

As Alleged to be Modified by:  
Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By Department of Finance, Requester.

Case No.: 14-MR-02

*California Public Records Act (02-TC-10  
& 02-TC-51)*

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

*(Adopted July 24, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 24, 2015. [Witness list will be included in the adopted decision.]

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

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

**SUMMARY OF THE FINDINGS**

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the 02-TC-10 & 02-TC-51 *California Public Records Act (CPRA)* mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the

California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 4, 2014.<sup>15</sup>

## COMMISSION FINDINGS

### I. Chronology

- |           |                                                                                                                                                                                   |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5/26/2011 | The Commission adopted the test claim statement of decision. <sup>16</sup>                                                                                                        |
| 4/19/2013 | The Commission adopted the parameters and guidelines. <sup>17</sup>                                                                                                               |
| 6/3/2014  | The voters adopted Proposition 42, which added paragraph 7 of article I, section 3(b), and paragraph 4 of article XIII B, section 6 to the California Constitution. <sup>18</sup> |
| 1/21/2015 | Department of Finance (Finance) filed a request for redetermination on <i>CPRA</i> , 02-TC-10 and 02-TC-51. <sup>19</sup>                                                         |
| 2/17/2015 | The State Controller's Office (Controller) submitted written comments on the redetermination request. <sup>20</sup>                                                               |
| 4/3/2015  | Commission staff issued the draft proposed decision for the first hearing on the request. <sup>21</sup>                                                                           |
| 4/23/2015 | The Controller filed comments on the draft proposed decision. <sup>22</sup>                                                                                                       |

<sup>15</sup> California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

<sup>16</sup> Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

<sup>17</sup> Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

<sup>18</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

<sup>19</sup> Exhibit A, Request for Redetermination.

<sup>20</sup> Exhibit D, Controller's Comments on Request for Redetermination filed September 26, 2014.

<sup>21</sup> Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

<sup>22</sup> Exhibit F, Controller's Comments on Draft Proposed Decision filed April 23, 2015.

- 5/29/2015 Commission adopted the decision for the first hearing.<sup>23</sup>
- 5/29/2015 Commission staff issued the draft proposed decision and the draft expedited amendment to parameters and guidelines for the second hearing.

## **Background**

### The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.<sup>24</sup>

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

#### **A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV B of these parameters and guidelines. The activities in section IV B represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

<sup>23</sup> Exhibit H, Decision, First Hearing, adopted May 29, 2015.

<sup>24</sup> See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

## **B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
  - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
  - 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
  - 3) Sending or transmitting the notice to the requestor.
- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
  - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
  - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
  - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)
  - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)<sup>25</sup>

#### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for

<sup>25</sup> Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”<sup>26</sup>

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

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>27</sup>

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”<sup>28</sup>

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”<sup>29</sup> If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”<sup>30</sup>

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

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

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.<sup>31</sup>

### **B. State Controller**

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to

<sup>26</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>27</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>28</sup> Code of Regulations, Title 2, section 1190. 5(a)(5)(B) (Register 2014, No. 21).

<sup>29</sup> Code of Regulations, Title 2, section 1190. 5(b)(1) (Register 2014, No. 21).

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

<sup>31</sup> Exhibit A, Request for Redetermination, at p. 1.

comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”<sup>32</sup>

### **III. Discussion**

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

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>33</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>34</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>35</sup>

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.<sup>36</sup>

#### **A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.**

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state

<sup>32</sup> Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.

<sup>33</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

<sup>34</sup> *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

<sup>35</sup> *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>36</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).



pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to section 6 of article XIII B of the California Constitution.”<sup>37</sup> Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for *CPRA*, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement stems. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

#### **B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.**

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

<sup>37</sup> Government Code section 17570(a)(1).

Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore *cannot* be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.<sup>38</sup> Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

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

**C. The CPRA Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning June 4, 2014.**

Government Code section 17570 provides that a redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."<sup>39</sup> This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day.<sup>40</sup> Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

**IV. Conclusion**

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

<sup>38</sup> California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

<sup>39</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>40</sup> California Constitution, article II, section 10.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On May 29, 2015, I served the:

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

**Mandate Redetermination Request, 14-MR-02**

*California Public Records Act (02-TC-10 and 02-TC-51)*

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

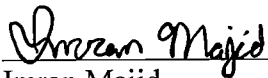
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355

As Alleged to be Modified by Proposition 42, adopted June 3, 2014

California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 29, 2015 at Sacramento, California.



Imran Majid

Commission on State Mandates

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**Claim Number:** 14-MR-02

**Matter:** California Public Records Act (02-TC-10 and 02-TC-51)

**Requester:** Department of Finance

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May 29, 2015

Ms. Evelyn Suess  
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 Local Government Unit  
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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**  
 Mandate Redetermination Request, 14-MR-02  
*California Public Records Act (02-TC-10 and 02-TC-51)*  
 Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
 Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
 As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
 California Department of Finance, Requester

Dear Ms. Suess:

On May 29, 2015 the Commission on State Mandates (Commission) adopted the decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The adopted decision is enclosed. The draft proposed decision for the second hearing and the draft expedited amendment to parameters and guidelines are enclosed for your review and comment.

**Written Comments on Second Hearing Draft Proposed Decision**

Written comments may be filed on the draft proposed decision by **June 19, 2015**. The draft proposed decision is set for hearing on **July 24, 2015**.

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

Staff has prepared a draft expedited amendment to parameters and guidelines for adoption at the July Commission hearing. The draft expedited amendment to parameters and guidelines is set for hearing on **July 24, 2015** and will only be taken up if the Commission first approves the request for redetermination.

Review of Draft Expedited Amendment to Parameters and Guidelines. Proposed modifications or comments may be filed on staff's draft proposal by **June 19, 2015**. (Cal. Code Regs., tit. 2, § 1183.9(c).)

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

You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your



Ms. Evelyn Sues  
May 29, 2015  
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documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

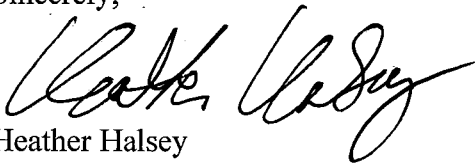
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### **Hearing**

The second hearing on the request for a mandate redetermination is set for **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Additionally, the amendment to the parameters and guidelines is also set for hearing on **Friday, July 24, 2015**, but will only be taken up if the Commission first approves the request for redetermination.

The proposed decision for the second hearing and amendment to the parameters and guidelines will be issued on or about July 10, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey  
Executive Director

**ITEM \_\_**  
**MANDATE REDETERMINATION**  
**SECOND HEARING: NEW TEST CLAIM DECISION**  
**DRAFT PROPOSED DECISION**

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799);  
and Statutes 2001, Chapter 355 (AB 1014)

As Alleged to be Modified by:  
Proposition 42, Primary Election, June 3, 2014

*California Public Records Act (02-TC-10 and 02-TC-51)*

14-MR-02

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On May 26, 2011, the Commission on State Mandates (Commission) adopted the *California Public Records Act (CPRA)* test claim decisions, 02-TC-10 and 02-TC-51, program. Specifically, the Commission found that Statutes 1992, Chapters 463, Statutes 2000, Chapter 982, and Statutes 2001, Chapter 355 amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 of the Government Code, resulting in an increased level of service related to the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education.<sup>1</sup>

Parameters and guidelines were adopted on April 19, 2013, authorizing reimbursement for the following activities:<sup>2</sup>

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;
- Making disclosable public records in electronic formats available in electronic formats;  
and

<sup>1</sup> Exhibit B, Test Claim Statement of Decision 02-TC-10 & 02-TC-51, adopted May 26, 2011.

- Removing an employee’s home address and home telephone number from any mailing list maintained by the agency when requested by the employee.<sup>3</sup>

On June 3, 2014, voters approved Proposition 42, also known as “California Compliance of Local Agencies with Public Act.”<sup>4</sup> The proposition amended article XIII B, section 6, of the California Constitution, adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."<sup>5</sup>

Proposition 42 also added paragraph 7 to article I, section 3(b) of the California Constitution to include the following language:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

### **Procedural History**

On January 21, 2015, the Department of Finance (Finance) filed a request for redetermination of the CPRA test claim, 02-TC-10 and 02-TC-51.<sup>6</sup> Finance asserts the passage of Proposition 42 constituted a “subsequent change in law” and the “state's obligation to reimburse affected local agencies has ceased.” On February 17, 2015, the State Controller’s Office (Controller) submitted comments, concurring with Finance's request to adopt a new test claim decision.<sup>7</sup> On April 3, 2015, Commission staff issued the draft proposed decision for the first hearing.<sup>8</sup> On April 23, 2015, the Controller filed comments concurring with the draft proposed decision.<sup>9</sup>

On May 29, 2015, the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim

<sup>3</sup> Exhibit C, Parameters and Guidelines, adopted April 19, 2013, p. 1.

<sup>4</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 42.

<sup>5</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 43.

<sup>6</sup> Exhibit A, Request for Redetermination, p. 1.

<sup>7</sup> Exhibit D, Controller’s Comments on Request for Redetermination.

<sup>8</sup> Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

<sup>9</sup> Exhibit F, State Controller’s Comments on Draft Proposed Decision filed April 23, 2015.

decision. On May 29, 2015, Commission staff issued the draft proposed decision and draft expedited parameters and guidelines for the second hearing.

### **Commission Responsibilities**

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>10</sup>

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.<sup>11</sup>

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

### **Staff Analysis**

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

Moreover, Proposition 42 amended article XIII B, section 6(a) of the California Constitution, by adding paragraph 4, to the list of mandates exempt from reimbursement under the Constitution, to provide "that the Legislature may, but need not, provide a subvention of funds for... Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I."

<sup>10</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>11</sup> Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

Article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7.

Therefore, article XIII B, section 6(a) paragraph 4 of the California Constitution as amended June 3, 2014 specifically exempts California Public Records Act from the subvention requirement.

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law...<sup>12</sup>

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement comes. Moreover, it expressly declares that activities under, Article I, section 3(b), paragraph 7, which include Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code), are not reimbursable state mandates under article XIII B, section 6. Therefore, pursuant to section 17514, the costs for the California Public Records Act (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not costs mandated by the state within the meaning of article XIII B section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 29, 2015, establishing eligibility beginning July 1, 2013. However, the effective date of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4 is June 4, 2014, the day after the election at which Proposition 42

<sup>12</sup> Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).

was approved.<sup>13</sup> Therefore, as a result of this proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of June 4, 2014.<sup>14</sup>

Based on the foregoing, staff finds the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning June 4, 2014.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning June 4, 2014.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

<sup>13</sup> See Exhibit X, Text of Proposed Law, section 5.

<sup>14</sup> California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

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

Government Code Sections 6253, 6253.1,  
6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040);  
Statutes 2000, Chapter 982 (AB 2799); and  
Statutes 2001, Chapter 355 (AB 1014)

*California Public Records Act*, 02-TC-10 and  
02-TC-51

As Alleged to be Modified by:  
Proposition 42, Primary Election, June 3, 2014

Filed on January 21, 2015

By Department of Finance, Requester.

Case No.: 14-MR-02

*California Public Records Act (02-TC-10  
& 02-TC-51)*

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

*(Adopted July 24, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 24, 2015. [Witness list will be included in the adopted decision.]

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

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

**SUMMARY OF THE FINDINGS**

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the 02-TC-10 & 02-TC-51 *California Public Records Act (CPRA)* mandate has been modified based on a subsequent change in law. Specifically, Proposition 42, adopted by the voters on June 3, 2014 added paragraph 4 to article XIII B, section 6(a) of the

California Constitution which, together with article I, section 3(b), paragraph 7, expressly declare that activities under Chapter 3.5 (commencing with Section 6250 of Division 7 of Title 1 of the Government Code) are not reimbursable state mandates under article XIII B, section 6. The approved activities in *CPRA* are imposed by Government Code provisions within chapter 3.5, and are therefore within the scope of article I, section 3(b), paragraph 7 and thus, article XIII B, section 6(a), paragraph 4 of the California Constitution. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *CPRA* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, effective June 4, 2014.<sup>15</sup>

## COMMISSION FINDINGS

### I. Chronology

- 5/26/2011 The Commission adopted the test claim statement of decision.<sup>16</sup>
- 4/19/2013 The Commission adopted the parameters and guidelines.<sup>17</sup>
- 6/3/2014 The voters adopted Proposition 42, which added paragraph 7 of article I, section 3(b), and paragraph 4 of article XIII B, section 6 to the California Constitution.<sup>18</sup>
- 1/21/2015 Department of Finance (Finance) filed a request for redetermination on *CPRA*, 02-TC-10 and 02-TC-51.<sup>19</sup>
- 2/17/2015 The State Controller's Office (Controller) submitted written comments on the redetermination request.<sup>20</sup>
- 4/3/2015 Commission staff issued the draft proposed decision for the first hearing on the request.<sup>21</sup>
- 4/23/2015 The Controller filed comments on the draft proposed decision.<sup>22</sup>

<sup>15</sup> California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

<sup>16</sup> Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

<sup>17</sup> Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

<sup>18</sup> Exhibit X, Text of Ballot Measure, Proposition 42, at p. 2.

<sup>19</sup> Exhibit A, Request for Redetermination.

<sup>20</sup> Exhibit D, Controller's Comments on Request for Redetermination filed September 26, 2014.

<sup>21</sup> Exhibit E, Draft Proposed Decision, First Hearing issued April 3, 2015.

<sup>22</sup> Exhibit F, Controller's Comments on Draft Proposed Decision filed April 23, 2015.



- 5/29/2015 Commission adopted the decision for the first hearing.<sup>23</sup>
- 5/29/2015 Commission staff issued the draft proposed decision and the draft expedited amendment to parameters and guidelines for the second hearing.

## **Background**

### The California Public Records Act Program

Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014) amended sections 6253, 6253.1, 6253.9, 6254.3, and 6255 to the Government Code, which require a local agency to (1) provide copies of public records with portions exempted from disclosure redacted; (2) notify a person making a public records request whether the requested records are disclosable; (3) assist members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) make disclosable public records in electronic formats available in electronic formats; and (5) remove an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee. The Commission found these statutes to impose reimbursable costs mandated by the state.<sup>24</sup>

In the parameters and guidelines for *CPRA*, the reimbursable activities are described as follows:

#### **A. One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate**

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV B of these parameters and guidelines. The activities in section IV B represent the incremental higher level of service approved by the Commission.

This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

<sup>23</sup> Exhibit H, Decision, First Hearing, adopted May 29, 2015.

<sup>24</sup> See Exhibit B, Test Claim Statement of Decision, 02-TC-10 and 02-TC-51.

## **B. Ongoing Activities**

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

This activity includes:

- a. Computer programming, extraction, or compiling necessary to produce disclosable records.
- b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:
  - a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.
  - 2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.
  - 3) Sending or transmitting the notice to the requestor.
- b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.
  - 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.
  - 3) Sending or transmitting the notice to the requestor.
- c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

This activity includes, where applicable:

- 1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.
- 2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.
- 3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This activity includes:

- a. Conferring with the requestor if clarification is needed to identify records requested.
- b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.
- c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:
  - a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)
  - b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)<sup>25</sup>

#### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for

<sup>25</sup> Exhibit C, Parameters and Guidelines, 02-TC-10 and 02-TC-51.

a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution.”<sup>26</sup>

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

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>27</sup>

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”<sup>28</sup>

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”<sup>29</sup> If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”<sup>30</sup>

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

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

Finance argues that Proposition 42 “specifically eliminated the requirements that the State of CA reimburse local government agencies for compliance” with the California Public Records Act.<sup>31</sup>

### **B. State Controller**

The Controller states that it concurs with Finance's request to adopt a new test claim decision for the CPRA test claim since Proposition 42 “requires local agencies and K-14 school districts to

<sup>26</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>27</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>28</sup> Code of Regulations, Title 2, section 1190. 5(a)(5)(B) (Register 2014, No. 21).

<sup>29</sup> Code of Regulations, Title 2, section 1190. 5(b)(1) (Register 2014, No. 21).

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

<sup>31</sup> Exhibit A, Request for Redetermination, at p. 1.

comply with specific state laws providing for public access to meetings of local government bodies and records of government officials” and “eliminates the requirement that the State reimburse local agencies and K-14 school districts for compliance with these laws.”<sup>32</sup>

### **III. Discussion**

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

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>33</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>34</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>35</sup>

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.<sup>36</sup>

#### **A. Proposition 42 Constitutes a Subsequent Change in Law, as Defined.**

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. Pursuant to section 17570, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state

<sup>32</sup> Exhibit D, Controller’s Comments on Request for Redetermination, filed February 17, 2015.

<sup>33</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

<sup>34</sup> *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

<sup>35</sup> *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>36</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

pursuant to section 17556; or (3) is another change in mandates law. This request for redetermination is based on a change in mandates law, which includes “amendments to section 6 of article XIII B of the California Constitution.”<sup>37</sup> Specifically, the request is based on Proposition 42, which added paragraph 4 to article XIII B section 6 to add the following to the list of exemptions from the subvention requirement:

“Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.”

The plain language exception to reimbursement adopted in Proposition 42 is alleged as a subsequent change in mandates law. Further, article I, section 3(b), paragraph 7 of the California Constitution, adopted by the voters June 3, 2014, provides, in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies...each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

The test claim statement of decision and parameters and guidelines for *CPRA*, 02-TC-10 and 02-TC-51 found reimbursable activities imposed by Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. Chapter 3.5, Division 7 of Title 1 of the Government Code includes sections 6250 through 6270.

Paragraph 4 of article XIII B section 6(a), adopted June 3, 2014, is “a change in mandates law,” as defined in Government Code section 17570, since it amends article XIII B section 6, the Constitutional provision from whence the subvention requirement stems. Article XIII B, section 6(a) paragraph 4 in turn references another constitutional provision, article I, section 3(b), paragraph 7, which requires local government to comply with the “California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). . .” and any subsequent amendments thereto or reenactments thereof.

#### **B. Proposition 42 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.**

On June 3, 2014, voters approved Proposition 42, which added paragraph 7 to article I, section 3(b) to the California Constitution, requiring local agencies to comply with the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 [commencing with Section 54950] of Part 1 of Division 2 of Title 5 of the Government Code).

<sup>37</sup> Government Code section 17570(a)(1).

Moreover, Proposition 42 amended section 6(a) of article XIII B of the California Constitution, by adding paragraph 4, to provide "that the Legislature may, but need not, provide a subvention of funds for... legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of section 3 of article I."

The California Public Records Act test claim found state-mandated increased costs under Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255. These code sections are all found within Chapter 3.5 of Division 7 of Title 1 of the Government Code, as described in article I, section 3(b), paragraph 7. Therefore, the plain language of article I, section 3(b), paragraph 7 and article XIII B, section 6(a), paragraph 4, enacted by Proposition 42, directly implicates these sections of the Government Code and therefore *cannot* be a reimbursable state mandate.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.<sup>38</sup> Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 6250-6255.

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

**C. The CPRA Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning June 4, 2014.**

Government Code section 17570 provides that a redetermination request "shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."<sup>39</sup> This redetermination request was filed on January 21, 2015, establishing potential eligibility beginning July 1, 2013. However, the subsequent change in law identified was adopted on June 3, 2014, and became effective the following day.<sup>40</sup> Therefore, the CPRA program no longer constitutes a reimbursable state-mandated program beginning June 4, 2014.

**IV. Conclusion**

Based on the foregoing, the Commission approves the request for redetermination and concludes that the CPRA program does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning June 4, 2014.

<sup>38</sup> California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

<sup>39</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>40</sup> California Constitution, article II, section 10.



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

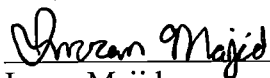
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2015, I served the:

**Adopted Decision, Notice of Second Hearing Draft Proposed Decision, Draft Expedited Amendment to Parameters and Guidelines, and Notice of Hearing**  
Mandate Redetermination Request, 14-MR-02  
*California Public Records Act (02-TC-10 and 02-TC-51)*  
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255  
Statutes 1992, Chapters 463; Statutes 2000, Chapter 982; and Statutes 2001, Chapter 355  
As Alleged to be Modified by Proposition 42, adopted June 3, 2014  
California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 29, 2015 at Sacramento, California.



Imran Majid  
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## Mailing List

**Last Updated:** 5/27/15

**Claim Number:** 14-MR-02

**Matter:** California Public Records Act (02-TC-10 and 02-TC-51)

**Requester:** Department of Finance

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

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41 *withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund*

42 *from proceeds received from the sale of bonds for the purpose of carrying out this article.*

998.552. *All money deposited in the fund that is derived from premium and accrued interest on bonds sold, in excess of any amount of premium used to pay costs of issuing the bonds, shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.*

998.553. *Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, all or a portion of the cost of bond issuance may be paid out of the bond proceeds, including any premium derived from the sale of the bonds. These costs shall be shared proportionally by each program funded through this bond act.*

998.554. *The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, including other authorized forms of interim financing that include, but are not limited to, commercial paper, in accordance with Section 16312 of the Government Code, for purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.*

998.555. *The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.*

998.556. *Notwithstanding any other provision of this article, or of the State General Obligation Bond Law, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment of earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or*

*desirable under federal tax law or to obtain any other advantage under federal law on behalf of the funds of this state.*

998.557. *The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.*

## PROPOSITION 42

This amendment proposed by Senate Constitutional Amendment 3 of the 2013–2014 Regular Session (Resolution Chapter 123, Statutes of 2013) expressly amends the California Constitution by amending sections thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENTS TO SECTION 3 OF ARTICLE I AND SECTION 6 OF ARTICLE XIII B

First—That Section 3 of Article I thereof is amended to read:

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) *In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.*

Second—That Section 6 of Article XIII B thereof is amended to read:

SEC. 6. (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.

(4) *Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.*

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.