

ITEM 5
INCORRECT REDUCTION CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 38408, 39831.3, and 39831.5; Vehicle Code Section 22112
Statutes 1992, Chapter 624; Statutes 1994, Chapter 831; Statutes 1996, Chapter 277;
Statutes 1997, Chapter 739;

School Bus Safety I and II

Fiscal Year 2002-2003

(07-4433-9722-I-01, 07-4433-9722-I-02, 07-4433-9722-I-03, 07-4433-9722-I-04,
07-4433-9722-I-05)

San Jose Unified School District, Fullerton Joint Union High School District, Sweetwater Union
High School District, San Ysidro School District, Clovis Unified School District, Claimants

EXECUTIVE SUMMARY

Introduction

These consolidated incorrect reduction claims raise common questions of law and fact and were returned to the claimant by the State Controller's Office for the same reason. In all claims, the claimant filed annual reimbursement claims for compliance with the *School Bus Safety I and II* program for fiscal year 2002-2003. The State Budget Act of 2002 specifically identified *School Bus Safety II* as a suspended program for which reimbursement would not be provided during fiscal year 2002-2003. (Stats. 2002, ch. 379, Item 6110-295-0001.) The State Controller's Office returned the reimbursement claims without conducting an audit on the ground that the program was suspended for fiscal year 2002-2003.¹

All claimants allege, however, that Government Code section 17581.5, the statute governing the suspension of the *School Bus Safety* program, did not become effective and operative until September 30, 2002 (Stats. 2002, ch. 1167, eff. Sept. 30, 2002), and therefore, they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, the effective date of Government Code section 17581.5.

¹ For fiscal year 2002-2003, the following amounts were claimed for reimbursement: San Jose Unified School District claimed reimbursement in the amount of \$22,193; Fullerton Joint Union High School District claimed reimbursement in the amount of \$1,554; Sweetwater Union High School District claimed reimbursement in the amount of \$1,956; San Ysidro School District claimed reimbursement in the amount of \$2,064; and Clovis Unified School District claimed reimbursement in the amount of \$8,404.

Analysis

Staff finds that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Bus Safety I* program (Stats. 1992, ch. 624) for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

The Department of Finance, however, requests that the Commission consider a more limited time frame for eligible reimbursements to reflect the practical reality of school district operations to allow reimbursement, not from July 1, 2002, but from the beginning of the school year.

The Commission cannot legally comply with the Department of Finance's request. The statutes enacted by the Legislature to govern the mandate reimbursement process establish reimbursement based on the fiscal year, and the Commission has no authority to change that date to the start of a school year. Any change to the eligible claiming periods for initial fiscal year and annual costs would violate the plain language of Government Code sections 17557, 17560 and 17561.

Conclusion

Staff concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Bus Safety I* program (Stats. 1992, ch. 624) for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and remand the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines amended on March 25, 2004, for the *School Bus Safety I* program for the limited time period from July 1, 2002, through September 29, 2002.

STAFF ANALYSIS

Chronology

- 10/25/07 and
11/05/07 Claimants filed incorrect reduction claims (Exhibit A)
- 11/01/07 and
11/13/07 Incorrect reduction claims issued for comment
- 05/13/10 Incorrect reduction claims consolidated pursuant to Government Code section 17558.8 and section 1185.4 of the Commission's regulations
- 06/14/10 Draft staff analysis issued (Exhibit B)
- 07/01/10 San Jose Unified School District, Fullerton Joint Union High School District, and Sweetwater Union High School District file comments on the draft staff analysis (Exhibit C)
- 07/01/10 Department of Finance files comments on the draft staff analysis (Exhibit D)
- 07/08/10 State Controller's Office files request to postpone hearing and for extension of time to file comments
- 07/14/10 Requests of State Controller's Office approved; extension to file comments granted until August 20, 2010
- 08/20/10 State Controller's Office files comments concurring with the draft staff analysis (Exhibit E)

Introduction

These consolidated incorrect reduction claims raise common questions of law and fact and were returned to the claimant by the State Controller's Office for the same reason. In all claims, the claimant filed annual reimbursement claims for compliance with the *School Bus Safety I and II* program for fiscal year 2002-2003. The State Budget Act of 2002 specifically identified *School Bus Safety II* as a suspended program for which reimbursement would not be provided during fiscal year 2002-2003. (Stats. 2002, ch. 379, Item 6110-295-0001.) The State Controller's Office returned the reimbursement claims without conducting an audit on the ground that the program was suspended for fiscal year 2002-2003.²

All claimants allege, however, that Government Code section 17581.5, the statute governing the suspension of the *School Bus Safety* program, did not become effective and operative until September 30, 2002 (Stats. 2002, ch. 1167, eff. Sept. 30, 2002), and therefore, they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, the effective date of Government Code section 17581.5.

² For fiscal year 2002-2003, the following amounts were claimed for reimbursement: San Jose Unified School District claimed reimbursement in the amount of \$22,193; Fullerton Joint Union High School District claimed reimbursement in the amount of \$1,554; Sweetwater Union High School District claimed reimbursement in the amount of \$1,956; San Ysidro School District claimed reimbursement in the amount of \$2,064; and Clovis Unified School District claimed reimbursement in the amount of \$8,404.

For the reasons stated in the analysis below, staff concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Bus Safety I* program (Stats. 1992, ch. 624) for the limited time period from July 1, 2002, through September 29, 2002 (the time period for which no statutory authority existed to relieve school districts of the duty to comply with the mandate). In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

Comments on the Draft Staff Analysis

San Jose Unified School District, Fullerton Joint Union High School District, and Sweetwater Union High School District filed comments concurring with the draft staff analysis. (Exhibit C.)

The Department of Finance requests that the Commission consider a more limited time frame for eligible reimbursements to reflect the practical reality of school district operations to allow reimbursement, not from July 1, 2002, but from the beginning of the school year. The Department of Finance's comments are addressed in the analysis below. (Exhibit D.)

The State Controller's Office filed comments concurring with the draft staff analysis. (Exhibit E.)

Issue: Did the State Controller's Office incorrectly return and reduce the claims of the school district claimants?

Government Code section 17561, subdivision (b), authorizes the State Controller's Office to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the State Controller's Office determines is excessive or unreasonable.

Government Code Section 17551, subdivision (d), requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (b) of Section 17561.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the Statement of Decision to the State Controller's Office and request that the costs in the claim be reinstated.

In the present case, the State Budget Act of 2002 was chaptered on September 5, 2002. The 2002 Budget Act, in Item 6110-295-0001, appropriates \$0 for the "*School Bus Safety II*" program, and states in provision 4.5 the following:

Pursuant to *section 17581 of the Government Code*, mandates identified in the appropriation schedule of this item with an appropriation of \$0 and included in the language of this provision are specifically identified by the Legislature for suspension during the 2002-2003 fiscal year:

- (1) School Bus Safety II (Ch. 624, Stats. 1992, Ch. 831, Stats. 1994, Ch. 739, Stats. 1997).

(2) School Crimes Reporting II (Ch. 759, Stats. 1992, Ch 410, Stats 1995).
(Emphasis added.)

Although the State Budget Act of 2002 refers to the program as “School Bus Safety II,” the statutes and chapters cited in the parenthesis include the statutes pled in *School Bus Safety I* (Stats. 1992, ch. 642, CSM 4433) and *School Bus Safety II* (Stats. 1994, ch. 831; Stats. 1997, ch. 739). In addition, the parameters and guidelines that existed in 2002 for the *School Bus Safety* program consolidated both test claims in one set of parameters and guidelines.³

The State Budget Act of 2002 cites to Government Code section 17581, which is the suspension statute for *local agencies*.⁴ Government Code section 17581 provides in relevant part that “[n]o local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if” (1) the statute or executive order has been determined by the Legislature, the Commission, or the court to be a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, and (2) the statute or executive order, or the Commission’ claim number, has been specifically identified by the Legislature in the State Budget Act as being one for which reimbursement is not provided for that fiscal year. Under such circumstances, Government Code section 17581, subdivision (c), authorizes a local agency that “elects to implement or give effect” to the suspended program the authority to assess fees in an amount that does not exceed the costs reasonably borne by the local agency. Thus, under Government Code section 17581, the Legislature relieves the local agency of the duty to comply with the mandated program during fiscal years in which no money is appropriated for the program and the program is specifically identified as being suspended by the Legislature.⁵ The state-mandated program becomes voluntary and not mandated by the state during the period of suspension.

Government Code section 17581, however, does not apply to school districts.⁶ Subdivision (b) of Government Code section 17581 expressly states that “[t]his section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution [Proposition 98].”

Thus, although the State Budget Act of 2002 appropriated \$0 to school districts for the *School Bus Safety I and II* program and identified the program in the State Budget Act for suspension, there was no statutory authority relieving school districts of the duty to comply with the mandated program. Unlike the provision for local agencies in Government Code section 17581, there was nothing in the law expressly stating that school districts were not required to implement or to give effect to the *School Bus Safety I and II* program. The program remained mandated by the state and school districts were required by law to comply with the mandate.

³ Exhibit F, parameters and guidelines adopted on November 30, 1999.

⁴ Government Code section 17518 defines “local agency” to mean “any city, county, special district, or other political subdivision of the state.”

⁵ *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 300-301.

⁶ Government Code section 17519 defines “school district” to mean “any school district, community college district, or county superintendent of schools.”

Under such circumstances, reimbursement is required by article XIII B, section 6 of the California Constitution.

The *School Bus Safety I and II* program remained a reimbursable state-mandated program from July 1, 2002 until September 30, 2002, when section 17581.5 was added to the Government Code “in order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time.” (Stats. 2002, ch. 1167, Assem. Bill No. 2781, §§ 37, 55.) Government Code section 17581.5 provides that school districts shall not be required to implement specified education mandates when they are suspended by the Legislature during a fiscal year. Section 17581.5, as added in 2002, stated the following:

- (a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
 - (1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
 - (2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.
- (b) This section applies only to the following mandates:
 - (1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992, Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).⁷
 - (2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and chapter 410 of the Statutes of 1995).⁸

With the enactment of Government Code section 17581.5, school districts were relieved of the duty to comply with the *School Bus Safety I and II* program beginning September 30, 2002, through the remaining 2002-2003 fiscal year, and for all future fiscal years that the program was identified as a suspended program.

⁷ Government Code section 17581.5 and the State Budget Act of 2002 do not cite to Statutes 1996, chapter 277, which was pled in *School Bus Safety II*. The 1996 statute, however, did not make any substantive changes to the reimbursable activities. The statute simply repealed Education Code section 39831.5 and added a new section 38048 that contained substantially the same provisions as former section 39831.5.

⁸ Government Code section 17581.5 has since been amended to add programs to the list of suspended education mandates.

However, on December 22, 2003, the Sacramento Superior Court entered judgment, and on February 3, 2004, issued a peremptory writ of mandate in *State of California Department of Finance v. Commission on State Mandates* (02CS00994), finding that the *School Bus Safety II* test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary. The court ordered the Commission to set aside the Statement of Decision and to vacate the parameters and guidelines and statewide cost estimate issued with respect to the *School Bus Safety II* test claim. On March 25, 2004, the Commission set aside the *School Bus Safety II* decision and vacated the parameters and guidelines for the *School Bus Safety II* program, leaving the parameters and guidelines for the *School Bus Safety I* program intact.^{9,10}

Accordingly, only the following *School Bus Safety I* activities mandated by Statutes 1992, chapter 624 are eligible for reimbursement from July 1, 2002, through September 29, 2002 (the time period for which no statutory authority existed to relieve school districts of the duty to comply with the mandate):

A. Instruction Prior to School Activity Trips (Ed. Code, § 39831.5, subd. (a))¹¹

Giving safety instruction, including, but not limited to, location of emergency exits, location and use of emergency equipment, and responsibilities of passengers seated next to an emergency exit, to all pupils at the elementary and secondary level riding a school bus or school pupil activity bus on any school activity trip.

B. Record Keeping and Retention (Ed. Code, § 39831.5, subd (b))¹²

Documenting the following information each time the safety information is given and maintaining the information for one year from the date of instruction:

1. Name of school district, county office of education.
2. Name and location of school.
3. Date of instruction.
4. Names of supervising adults.

⁹ Exhibit F, Order to Set Aside Statement of Decision in *School Bus Safety II* and Amended Parameters and Guidelines adopted March 25, 2004.

¹⁰ The court left an issue for remand, ordering the Commission “to rehear the *School Bus Safety II* test claim and to issue a decision on the limited issue of whether the federal Individuals with Disabilities Education Act (IDEA) or any other federal law requires school districts to transport any students and, if so, do the *School Bus Safety II* test claim statutes mandate a higher level of service or new program beyond federal requirements for which there are reimbursable state-mandated costs?” On March 25, 2005, the Commission concluded that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program; therefore, pursuant to the court decision described above, and article XIII B, section 6 of the California Constitution, the *School Bus Safety II* test claim statutes do not impose a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

¹¹ As added by Statutes 1992, chapter 624.

¹² As added by Statutes 1992, chapter 624.

5. Number of pupils participating.
6. Grade levels of pupils.
7. Subjects covered in instruction.
8. Amount of time taken for instruction.
9. Bus driver's name.
10. Bus number.
11. Additional remarks.

C. Hand-held Stop Signs (Veh. Code, § 22112, sub. (c)(3))¹³

1. Stop Signs

Reasonable costs for the purchase or manufacture of the hand-held "STOP" signs required to comply with Vehicle Code section 22112, subdivision (c), subpart (3). The cost for replacement/refinishing of worn out signs due to normal wear and tear is reimbursable. The cost of a manufactured/refinished hand held sign shall not exceed the cost for which a sign can be purchased.

2. Number of Stop Signs

The number of claimable hand held signs shall equal the lesser of the number of school busses or school bus routes, plus an additional five percent (but not less than one additional sign) to provide spare signs for use in the event a sign is lost, stolen, or otherwise unusable or unavailable; providing, however, that the number of claimable hand held signs shall not exceed the number of operable school busses during the fiscal year, plus the additional five percent (but not less than one additional sign).

3. Stop Sign Storage

Reasonable costs of labor and associated costs for materials and supplies needed to provide legally necessary storage for the hand-held "STOP" signs on school busses when the signs are not in use.

Thus, the school district claimants are entitled to reimbursement for the state-mandated activities in *School Bus Safety I* for the limited time period from July 1, 2002, through September 29, 2002.

The Department of Finance, however, requests that the Commission consider a more limited time frame for eligible reimbursements to reflect the practical reality of school district operations to allow reimbursement, not from July 1, 2002, but from the beginning of the school year. The Department of Finance states the following:

Specifically, we note that Commission staff has concluded that reimbursement may be submitted by eligible districts for the claimable period of July 1, 2002 to September 29, 2002. This conclusion is based on a very technical and legal view, that absent the passage of the controlling statutes governing the suspension of the School Bus Safety program, districts had no effective recourse not to comply with

¹³ As amended by Statutes 1992, chapter 624; now renumbered subdivision (d)(3).

these activities until the actual legislation was enacted on September 29, 2002, to suspend this program. While we believe that budget developments in the proceeding [sic] months should have sent very strong signals to school districts regarding the likely hood [sic] of suspension for that program in 2002, we understand the technical basis upon which September 29th was concluded to represent the end of the reimbursement period. However, we vigorously disagree that July 1st is an appropriate starting point for the reimbursement period for most school districts, with the exception of those that may have operated summer school programs that year. For most school districts, the earliest date in which most of the claimable activities would have commenced is the beginning of the school year, not the fiscal year. As such, we believe that any approved cost claims under this program should reflect that practical reality, which will likely narrow the reimbursement timeframe for most activities to less than one month. Furthermore, it is our expectation that the Controller's Office will take this into account during their final review and approval of these claims. (Exhibit D.)

The Commission cannot legally comply with the Department of Finance's request. The statutes enacted by the Legislature to govern the mandate reimbursement process establish reimbursement based on the fiscal year that starts July 1, and the Commission has no authority to change that date to the start of a school year. Government Code section 17561, subdivision (a), provides that "[t]he state shall reimburse each local agency and school district for *all* 'costs mandated by the state' as defined in Section 17514 ...". The initial period of reimbursement for a mandated program is governed by Government Code section 17557, subdivision (e), which states in part that "a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that *fiscal year*." Pursuant to Government Code section 17561, subdivision (d)(1)(A), "each local agency or school district to which the mandate is applicable shall submit claims *for initial fiscal year costs* to the Controller within 120 days of the issuance date for the claiming instructions." Thereafter, local agencies and school districts may file annual reimbursement claims with the State Controller's Office pursuant to Government Code section 17560 "that details the costs actually incurred *for that fiscal year*."¹⁴ Although it may be true that costs would be limited for this program during the July 1, 2002, through September 29, 2002 period because schools are generally out of session during the summer months as suggested by the Department of Finance, any change made by the Commission to the eligible claiming periods for initial fiscal year and annual costs would violate the Government Code statutes.

CONCLUSION

Staff concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Bus Safety I* program (Stats. 1992, ch. 624) for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and remand the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for

¹⁴ Emphasis added to these statutes.

reimbursement pursuant to the parameters and guidelines amended on March 25, 2004, for the *School Bus Safety I* program for the limited time period from July 1, 2002, through September 29, 2002.