

ITEM 10
TEST CLAIM
PROPOSED STATEMENT OF DECISION

Statutes 2004, Chapter 890 (AB 2856); Government Code Section 17553, 17557, and 17564;
California Code of Regulations, Title 2, Sections 1183 and 1183.13

Mandate Reimbursement Process II
05-TC-05

City of Newport Beach, claimant

EXECUTIVE SUMMARY

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the October 4, 2006 hearing on the above named test claim.¹

Recommendation

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

However, if the Commission's vote on Item 9 modifies the staff analysis, staff recommends that the motion on adopting the Proposed Statement of Decision reflect those changes, which would be made before issuing the final Statement of Decision. In the alternative, if the changes are significant, it is recommended that adoption of a Proposed Statement of Decision be continued to the December 7, 2006 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Statutes 2004, Chapter 890 (AB 2856);
Government Code Sections 17553, 17557, and
17564; California Code of Regulations, Title 2,
Sections 1183 and 1183.13 (Register 2005, No.
36, eff. 9/6/2005)

Filed on September 27, 2005

By City of Newport Beach, Claimant.

Case No.: 05-TC-05

Mandate Reimbursement Process II

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

(Proposed for adoption on October 4, 2006)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on October 4, 2006. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

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

Summary of Findings

The Commission finds that the test claim statutes and executive orders do not impose a reimbursable state-mandated program on local agencies or school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Background

The Test Claim Statutes and Executive Orders

Statutes 2004, chapter 890 amended the Government Code statutes that establish the process for seeking reimbursement for state-mandated costs under article XIII B, section 6. Although many code sections were amended by chapter 890, the claimant pled only Government Code sections 17553, 17557, and 17564, as well as California Code of Regulations, title 2, sections 1183 and 1183.13, regarding filing test claims and adopting parameters and guidelines.

Government Code section 17553 was amended by the test claim statute to incorporate the test claim filing requirements, so that a test claim filing must include the following:

- A detailed description of costs that arise from or are modified by the mandate.
- The actual increased costs incurred by the claimant during the fiscal year for which the test claim was filed.

- The actual or estimated annual costs that will be incurred to implement the alleged mandate during the fiscal year immediately following the fiscal year when the test claim was filed.
- A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year when the test claim was filed.
- Identification of federal, state, and local funds dedicated for the alleged mandate.
- Declarations supporting actual or estimated costs that will be incurred, and declarations identifying all funds that will be used to offset the cost of the program.

Claimant also pled California Code of Regulations, title 2, section 1183, which was amended effective September 6, 2005, to remove most of the specific requirements for a test claim filing, which requirements were placed, in addition to others, into Government Code section 17553 by the test claim statute. Subdivision (d) of section 1183 now states, “All test claims, or amendments thereto ... shall contain all of the elements and supplemental documents required by the form and statute.”

The test claim statute also amended Government Code section 17557, which describes the adoption of parameters and guidelines, to add the following:

(f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

Code of Regulations, title 2, section 1183.13, which claimant also pled, was added effective September 6, 2005, as follows:

§ 1183.13. Reasonable Reimbursement Methodology.

(a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5,^[2] should be considered; or if the Department of Finance,

² Government Code section 17518.5, the definition of Reasonable Reimbursement Methodology, was also added by Statutes 2004, chapter 890, the test claim statute. Because it was not pled by the claimant, the Commission makes no findings on this section, which states:

(a) "Reasonable reimbursement methodology" means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

(2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

(b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of

Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

(b) Proposed reasonable reimbursement methodologies, as described in Government Code section 17518.5, shall include any documentation or assumptions relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

The test claim statute also amended Government Code section 17564, which addresses the minimum dollar amount (\$1000) for reimbursement claims and combined reimbursement claims. Section 17564³ was amended to add the underlined text as follows:

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions.

more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(c) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance. (2) The Controller. (3) An affected state agency.

(4) A claimant. (5) An interested party.

³ All references are to the Government Code unless otherwise indicated.

Prior Commission Decisions and Parameters and Guidelines

On April 24, 1986, the Commission adopted the *Mandate Reimbursement Process* Statement of Decision, determining that Statutes 1975, chapter 486 and Statutes 1984, chapter 1459 (Gov. Code, § 17500 et seq., which establish the reimbursement process before the Commission) impose a reimbursable mandate on local agencies and school districts. On November 20, 1986, the Commission adopted parameters and guidelines, determining that the following activities are reimbursable:

A. Scope of the Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs—both direct and indirect—are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities—Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including court responses, if an adverse Commission ruling is later reversed. [**Note:** the phrase, “including court responses, if an adverse Commission ruling is later reversed” was amended out in March 1987 and replaced with “including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order.”] These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.

C. Reimbursable Activities –Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.

Incorrect Reduction Claims are considered to be an element of the reimbursement claim process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

In addition to the March 1987 amendment indicated above, the parameters and guidelines have been amended 11 times between 1995 and 2005. The 1995 amendment was the result of a provision in the state budget act that limited reimbursement for independent contractor costs for preparation and submission of reimbursement claims. Identical amendments were required by the Budget Acts of 1996 (amended Jan 1997), 1997 (amended Sept. 1997), 1998 (amended Oct. 1998), 1999 (amended Sept. 1999), 2000 (amended Sept. 2000), 2001 (amended Oct. 2001), 2002 (amended Feb. 2003), 2003 (amended Sept. 2003), 2004 (amended Dec. 2004), and 2005 (amended Sept. 2005). In addition to technical amendments, the language in the parameters and guidelines was updated as necessary for consistency with other recently adopted parameters and guidelines.

The *Mandate Reimbursement Process* mandate is suspended in the 2006 Budget for local agencies,⁴ but is deferred for school districts with an appropriation of \$1000.⁵

Reconsideration: Statutes 2005, chapter 72, section 17 (Assem. Bill No. 138) directed the Commission to reconsider whether the *Mandate Reimbursement Process* program (CSM Nos. 4204 & 4485) constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, in light of subsequently enacted state or federal statutes or case law, and directed that the Commission’s decision be effective July 1, 2006. Chapter 72 also states, “If a new test claim is filed on Chapter 890 of the Statutes of 2004, [the statute claimed in this test claim] the commission shall, if practicable, hear and determine the new test claim at the same time as the reconsideration of CSM-4202.”

The Commission determined, at its May 25, 2006 hearing, that because Statutes 1975, chapter 486 was repealed by Statutes 1986, chapter 879, it no longer imposes a state-mandated program. The Commission also determined that Statutes 1984, chapter 1459 no longer imposes a state-mandated program because Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, A.B. 138) prohibits the Commission from finding costs mandated by the state if “The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election.” Finding that Statutes 1984, chapter 1459 is reasonably within the scope of or necessary to implement article XIII B, section 6 (which was enacted in Proposition 4, a ballot measure approved in a statewide election) the Commission denied the *Mandate Reimbursement Process* test claim effective July 1, 2006.

Claimant Position

Claimant alleges that the test claim statutes and regulations impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. As to Government Code section 17553, claimant pleads activities related to filing a test claim that is more detailed, including

⁴ Statutes 2006, chapter 48 (Assem. Bill No. 1811, § 48, 2005-2006 Reg. Sess.) amending Item 8885-295-0001, Schedule (3)(y).

⁵ Statutes 2006, chapter 48 (Assem. Bill No. 1811, § 44, 2005-2006 Reg. Sess.) Item 6110-295-0001, Schedule (4). The original budget bill (Stats. 2006, ch. 47, Assem. Bill No. 1801, 2005-2006 Reg. Sess.) Item 6110-295-0001, Schedule (4), appropriated \$13.79 million.

pleading actual costs, a review of offsets and available funding, inquiring of other jurisdictions to establish a statewide cost estimate, and calculating a reasonable reimbursement methodology. In short, claimant alleges the following activities to comply with amended section 17553:

[I]nterviews, conferences, research and document retrieval and review sufficient to plead with specificity the new activities required, the modified activities required, actual costs, annual actual or estimated costs, a statewide cost estimate, off-sets and funding sources, and prior Commission decisions and the drafting of declarations thereon ... additional research, drafting of written responses, witness(es) preparation, hearing/conference preparation, and hearing/conference time dedicated to those issues that result from the new pleading guidelines.⁶

In order to comply with amended section 17557, subdivision (f), and California Code of Regulations, title 2, section 1173.13, claimant alleges activities related to creating a reasonable reimbursement methodology, including,

[A]ttendance at conferences ... interviews, conferences, research and document retrieval and review sufficient to research and propose, defend or rebut a reasonable reimbursement methodology; drafting of a reasonable reimbursement methodology or written responses; witness(es) preparation, hearing/conference preparation, and hearing/conference time dedicated to reasonable reimbursement methodology issues; as well as mailing and services costs.⁷

As to amended section 17564, subdivision (b), which was amended to require claims to be filed “in the manner prescribed in the parameters and guidelines and claiming instructions” claimant alleged that this would increase accounting requirements making claiming a laborious process through the additional research and compilation of materials. Claimant alleged the following to comply with section 17564, subdivision (b), as amended by the test claim statute, “interviews, conferences, research, calculations and document retrieval and review sufficient to comply with the claiming instructions.”⁸

Claimant did not file comments on the draft staff analysis.

State Agency Position

No state agencies submitted comments on this test claim or the draft staff analysis.

⁶ *Mandate Reimbursement Process II* test claim (05-TC-05), page 8.

⁷ *Ibid.*

⁸ *Ibid.*

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁰ “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.”¹¹ 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.¹²

In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹³

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 policy, but does not apply generally to all residents and entities in the state.¹⁴ To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before their enactment.¹⁵ A

⁹ Article XIII B, section 6, subdivision (a), (as amended in November 2004) provides:

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

¹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

¹¹ *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

¹² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹³ *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*).

¹⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

“higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁶

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁷

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 6.¹⁸ 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.”¹⁹

Issue: Do the test claim statutes and executive orders impose “costs mandated by the state” within the meaning of Article XIII B, section 6 and Government Code sections 17514 and 17556?

Article XIII B, section 6 of the California Constitution provides:

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

Pursuant to the plain language of this constitutional provision, the test claim statute must constitute a state-mandated program.²⁰

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,

¹⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁷ *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.

¹⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁹ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735. *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1581.

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.

Claimant alleges incurred costs ranging from \$1500 to \$36,800 to comply with the new test claim filing requirements.²¹

Reimbursement is not required, however, if any of the exceptions in Government Code section 17556 apply.

In this case, the sole issue is whether Government Code section 17556, subdivision (f) (as amended by Stats. 2005, ch. 72, Assem. Bill No. 138, eff. Jul. 19, 2005) applies to the test claim statutes and executive orders. Section 17556, subdivision (f) states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶]...[¶]

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

The Commission finds that this subdivision applies to the test claim statutes and executive orders so that it does not impose ‘costs mandated by the state’ within the meaning of article XIII B, section 6 and Government Code sections 17514 and 17556.

Article XIII B, section 6 is a Constitutional initiative enacted in 1979 by Proposition 4. In interpreting the Constitution and Government Code section 17556, subdivision (f), it is important to remember the following:

In interpreting a legislative enactment with respect to a provision of the California Constitution, we bear in mind the following fundamental principles: ... [A]ll intendments favor the exercise of the Legislature’s plenary authority: If there is any doubt as to the Legislature’s power to act in any given case, the doubt should be resolved in favor of the Legislature’s action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.²²

And one court called Government Code section 17556 a legislative interpretation of section 6.²³

²¹ Test Claim 05-TC-05, page 10. This does not include additional costs to comply with the claiming instructions, of which claimant states: “Due to the highly speculative nature of compliance with the claiming instructions, no estimate can be made at this time.” (*Id.*)

²² *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3d 168, 180.

²³ *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, supra*, 55 Cal. App. 4th 976, 984.

Government Code section 17500 et seq. was enacted to implement article XIII B, section 6. Government Code section 17500 expressly states that the legislative intent “in enacting this part [is] to provide for the implementation of Section 6 of Article XIII B of the California Constitution.” Thus the test claim statutes and executive orders, as part of that statutory scheme, meet the standard of section 17556, subdivision (f), in that they are “necessary to implement [or] reasonably within the scope of” article XIII B, section 6.

Since the Legislature has made this express declaration regarding Government Code section 17500 et seq., an analysis regarding whether these statutes and executive orders are “necessary to implement” or “reasonably within the scope of” article XIII B, section 6, is unnecessary.

Moreover, if the test claim statutes and executive orders are a voter mandate (or reasonably within its scope) they are not state mandates within the meaning of article XIII B, section 6.²⁴

Since the test claim statutes and executive orders do not impose costs mandated by the state, there is no need to analyze whether they constitute a new program or higher level of service within the meaning of article XIII B, section 6.

CONCLUSION

The Commission finds that the test claim statutes and executive orders do not impose “costs mandated by the state” on local agencies or school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

²⁴ Cf. *San Diego Unified School Dist.*, *supra*, 33 Cal. 4th 859, 880. “[A]rticle XIII B, section 6, and the implementing statutes ... provide for reimbursement only of *state*-mandated costs, not *federally* mandated costs.”