

COMMISSION ON STATE MANDATES

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November 19, 2013

Mr. Michael Byrne
Department of Finance
915 L Street, Room 1190
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Final Staff Analysis and Proposed Statement of Decision, and Notice of Hearing**
Mandate Redetermination Request, 12-MR-02
Local Recreational Areas: Background Screenings, (01-TC-11)
Public Resources Code Section 5164(b)(1), (b)(2), and (b)(3) as added or amended by
Statutes 2001, Chapter 777 (AB 351); Statutes 2010, Chapter 719, (SB 856)
California Department of Finance, Requester

Dear Mr. Byrne:

The final staff analysis for the above-named matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, December 6, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

Hearing Date: December 6, 2013

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ITEM 6
MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
FINAL STAFF ANALYSIS AND
PROPOSED STATEMENT OF DECISION

Public Resources Code Section 5164

Statutes 2001, Chapter 777

Local Recreational Areas: Background Screenings, (01-TC-11)

As Alleged to be Modified by:

Statutes 2010, Chapter 719 (SB 856)

12-MR-02

Department of Finance, Requester

Attached is the proposed statement of decision for this matter. This Executive Summary and the proposed statement of decision also function as the final staff analysis, as required by section 1190.05 of the Commission's regulations.

EXECUTIVE SUMMARY

Overview

On December 9, 2005, the Commission on State Mandates (Commission) adopted a statement of decision approving reimbursement for the *Local Recreational Areas: Background Screenings* program, 01-TC-11, which required local agencies to have prospective employees or volunteers complete an application that inquires whether the person has been convicted of any offense specified in Public Resources Code 5164, and to screen prospective employees and volunteers who would have supervisory or disciplinary authority over minors pursuant to Penal Code section 11105.3. That screening requires submitting the prospective employee's or volunteer's fingerprints, along with any other information required on a DOJ-approved form, and paying a fingerprint processing fee for prospective employees, but not for volunteers.

On June 26, 2008, the Commission adopted parameters and guidelines for the approved activities as follows:

1. Have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164(a). (Pub. Res. Code, § 5164, subd. (b)(1)). This is a one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.

2. Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to the Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer). (Pub. Res. Code, § 5164, subs. (b)(1) & (b)(2)).

The Commission further found that fingerprints “may be taken by the local agency,” and if taken by the local agency, the agency “may charge a fee not to exceed \$10,” and other entities may charge more. The Commission therefore concluded that taking fingerprints was permissive, and therefore not reimbursable.

Statutes 2010, chapter 719 (SB 856) added subdivision (b)(3) to Public Resources Code section 5164, which provides that “[a] county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the...costs attributable to the requirements imposed by this section.”¹ Statutes 2010, chapter 719 also added section 17570 to the Government Code, outlining the Commission's process for redetermination of test claims. This statute was an urgency measure and was chaptered on October 19, 2010.

On May 20, 2013, the Department of Finance (Finance) filed a request for redetermination of the test claim decision pursuant to Government Code section 17570.² Finance asserts that Statutes 2010, chapter 719 constitutes a subsequent change in the law, as defined in section 17570, which, pursuant to section 17556(d), results in the state's liability under the test claim statutes being modified.³ Specifically, Finance argues that “as a result of the subsequent change in law, local agencies may charge a fee to cover all of their costs attributable to the mandated activities in Public Resources Code section 5164.”

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 Government Code provides for a two hearing process. The Commission's regulations state that “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, subdivision (a) of the California Constitution.” The regulations state that 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 responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.” The regulations further state that “[i]f 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

¹ Public Resources Code section 5164 (as amended by Stats. 2010, ch. 719 (SB 856)).

² Based on the May 20, 2013 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2011.

³ Exhibit A, Request for Redetermination, at p. 6.

alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.⁴

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.

Under section 17570, a request for redetermination of a test claim must 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." Based on the filing date of this request for redetermination, reimbursement would end, if the request is granted, beginning July 1, 2011.

Staff Analysis

Government Code section 17556(d) provides that the Commission *shall not find* costs mandated by the state, within the meaning of article XIII B, section 6, if "[t]he 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." Section 17556(d) also states that this rule "applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued."⁵

Staff finds that Statutes 2010, chapter 719 (SB 856) constitutes a subsequent change in law, as defined in section 17570. Statutes 2010, chapter 719 provides local government with the authority to impose fees or charges "to cover *all...costs* attributable to the requirements imposed by" the test claim statute and, pursuant to section 17556(d), the Commission shall not find costs mandated by the state where the local government has such authority. Therefore, Finance has made an adequate showing that the state's liability under the 01-TC-11 test claim decision has been modified, and that Finance has a substantial possibility of prevailing at the second hearing.

Staff Recommendation

Staff recommends that the Commission adopt this statement of 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 statement of decision, the second hearing for this matter will be set for January 24, 2014.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed statement of decision following the hearing.

⁴ Code of Regulations, Title 2, section 1190.05 (Register 2010, No. 48).

⁵ Government Code section 17556 (As amended by Stats. 2010, ch. 719 (SB 856)).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING
ON:

Public Resources Code Section 5164;

As amended by Statutes 2001, Chapter 777.

*Local Recreational Areas: Background
Screenings, 01-TC-11*

As Alleged to be Modified by:

Statutes 2010, Chapter 719 (SB 856)

Filed on May 30, 2013

By the Department of Finance, Requester.

Case No.: 12-MR-02

*Local Recreational Areas: Background
Screenings, (01-TC-11)*

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500, ET SEQ.;
CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION
2, CHAPTER 2.5, ARTICLE 7.
[Gov. Code, § 17570; Cal. Code Regs.,
tit. 2, § 1190.05]

(Adopted December 6, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on December 6, 2013. [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., title 2, California Code of Regulations 1189 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final statement of 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 the 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 01-TC-11 mandate has been modified based on a subsequent change in law. Specifically, Statutes 2010, chapter 719 (SB 856) provided local agencies with the authority to charge a fee on prospective employees or volunteers to cover all costs attributable to the mandated background

check activities under Public Resources Code section 5164, and Government Code section 17556(d) proscribes a finding of costs mandated by the state where the local government has fee authority sufficient to cover the costs of the mandate. 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

- 12/09/2005 The Commission adopted the test claim statement of decision for *Local Recreational Areas: Background Screenings*, 01-TC-11, approving reimbursement for certain activities under Public Resources Code section 5164.⁶
- 06/26/2008 The Commission adopted parameters and guidelines.⁷
- 10/19/2010 The Legislature enacted SB 856, which added subdivision (b)(3) to Public Resources Code section 5164, providing for fee authority.⁸
- 05/20/2013 The Department of Finance filed a request for redetermination on test claim 01-TC-11.⁹
- 05/29/2013 Commission staff deemed the filing complete.
- 09/17/2013 Staff issued a draft staff analysis and proposed statement of decision for the first hearing.¹⁰
- 09/30/2013 The State Controller's Office submitted written comments on the draft staff analysis for the first hearing.¹¹
- 10/08/2013 The Department of Finance submitted written comments on the draft staff analysis for the first hearing.¹²

II. Background

Public Resources Code Section 5164 and Test Claim Decision

Public Resources Code section 5164 was enacted in 1993 (Stats. 1993, ch. 972) to prohibit a city, county or special district from hiring a volunteer or employee for positions having supervisory or

⁶ Exhibit B, Test Claim Statement of Decision.

⁷ Exhibit C, Test Claim Parameters and Guidelines.

⁸ See Exhibit A, Request for Redetermination.

⁹ Exhibit A, Request for Redetermination.

¹⁰ Exhibit D, Draft Staff Analysis, First Hearing.

¹¹ Exhibit E, SCO Comments on Draft Staff Analysis, First Hearing.

¹² Exhibit F, Finance Comments on Draft Staff Analysis, First Hearing.

disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. Section 5164 was enacted because of a volunteer coach's 1992 conviction for kidnapping and molesting a boy who was coached at Hoover Recreation Center in Los Angeles County. The coach was a registered sex offender whose background had not been inquired about by the recreation center.¹³ The test claim statute at issue in 01-TC-11 (Stats. 2001, ch. 777, (AB 351)),¹⁴ amended Public Resources Code section 5164 to provide that a city, county, city and county, or special district, shall not hire a person for employment, or take on a volunteer, in a position having supervisory or disciplinary authority over any minor if that person has been convicted of any offense specified in Penal Code section 11105.3(h)(1) or (h)(3). Statutes 2001, chapter 777 (AB 351) further provided that the city, county, or special district shall require each prospective employee or volunteer to complete an application inquiring whether the individual has been convicted of any of certain specified offenses, and shall screen any such prospective employee or volunteer for that person's criminal background, including obtaining fingerprints and a Department of Justice record. Penal Code section 11105.3(h)(3), (now Pub. Res. Code, § 5164(a)(2))¹⁵ listed a number of crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors, including, but not limited to, a number of permutations of sexual assault and sexual battery, unlawful sexual intercourse with a person under 18, corporal punishment or injury of a child, willful infliction of corporal injury, registerable sex offenses under section 290, or any other felony or misdemeanor conviction within 10 years of the prospective employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10 year period.¹⁶

The Commission found that the test claim statute imposed a reimbursable state-mandated program on local government for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164(a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ:

¹³ Assembly Committee on Local Government, Analysis of Assembly Bill 1663, as amended April 12, 1993 (1993-1994 Reg. Sess.), page 2.

¹⁴ Section 5164 has been amended since the test claim filing by Statutes 2004, chapter 184, but the amendments are not part of this analysis.

¹⁵ Former Penal Code section 11105.3(h)(3), was amended by Statutes 2004, chapter 184, and moved to Public Resources Code section 5164(a)(2).

¹⁶ Exhibit B, Test Claim Statement of Decision, at pp. 2-4.

(1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).¹⁷ (Pub. Res. Code, § 5164, subs. (b)(1) & (b)(2)).

The Commission further found that fingerprints “may be taken by the local agency,” and if taken by the local agency, the agency “may charge a fee not to exceed \$10,” and other entities may charge more. The Commission therefore concluded that taking fingerprints was permissive, and therefore not reimbursable.¹⁸

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. Section 17570 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, subdivision (a) of the California Constitution.”¹⁹

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 17551.²⁰

An “adequate showing” is defined 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 responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.²¹

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “the commission shall publish a decision finding that an adequate showing has been made and

¹⁷ Public Resources Code section 5164(b)(2).

¹⁸ Exhibit B, Test Claim Statement of Decision, at p. 7 [citing Penal Code section 13300].

¹⁹ Code of Regulations, Title 2, section 1190.05(a)(1).

²⁰ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

²¹ California Code of Regulations, Title 2, section 1190.05(a)(1).

setting the second hearing on the request to adopt a new test claim decision to supersede the previously adopted test claim decision.”²²

III. Position of the Department of Finance, Requester²³

Finance submitted a request to adopt a new test claim decision regarding Public Resources Code section 5164, pursuant to Government Code section 17570. Finance asserts that Statutes 2010, chapter 719 (SB 856) constitutes a subsequent change in the law, as defined in section 17570, which, when analyzed in light of section 17556, results in the state’s liability under the test claim statutes being modified. Finance argues that “local agencies may charge a fee to cover all of their costs attributable to the mandated activities in Public Resources Code section 5164,” and that therefore the state is no longer obligated to reimburse any costs for the mandated activities, pursuant to Government Code sections 17570 and 17556(d).²⁴

On October 8, 2013, Finance submitted comments on the draft staff analysis and proposed statement of decision, concurring with the recommendation to adopt the proposed statement of decision and proceed to a second hearing to determine whether to adopt a new test claim decision.²⁵

IV. Discussion

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a 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 6.²⁶ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²⁷ In making its decisions, the Commission must strictly construe

²² California Code of Regulations, Title 2, section 1190.05(a)(5)(B).

²³ No other parties, or interested parties or persons have filed comments on this request for redetermination.

²⁴ Exhibit A, Request for Redetermination, at p. 6.

²⁵ Exhibit F, Finance Comments on Draft Staff Analysis, First Hearing.

²⁶ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

²⁷ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

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.”²⁸

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 intended, pursuant to the Government Code and the Commission’s regulations, to determine 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, analysis of section 17556(d), as well as consideration of the comments submitted by interested parties, will be limited to whether the request, when considered in light of all of the written responses and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing.”²⁹ 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. A Subsequent Change in Law is Alleged Resulting from Statutes 2010, Chapter 719.

On December 9, 2005, the Commission adopted a test claim decision in *Local Recreational Areas: Background Screenings*, 01-TC-11, finding reimbursable state-mandated activities imposed by Public Resources Code section 5164, as amended by Statutes 2001, chapter 777 (AB 351). On June 26, 2008, the Commission adopted parameters and guidelines for reimbursement of claims under the statute, which outlined the reimbursable activities as follows:

1. Have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164(a). (Pub. Res. Code, § 5164(b)(1)). This is a one-time activity of revising and printing job applications that inquire as to the applicants’ criminal history.

²⁸ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁹ Code of Regulations, Title 2, section 1190.05 (Register 2010, No. 48). 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, subdivision (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 responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

2. Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to the Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer). (Pub. Res. Code, § 5164(b)(1) & (b)(2)).

The Commission found that the following activities are not reimbursable:

- Taking fingerprints.
- Paying DOJ's fingerprint processing fee for a prospective volunteer.³⁰

Statutes 2010, chapter 719 (SB 856), effective October 19, 2010, added subdivision (b)(3) to Public Resources Code section 5164, which provides that a local government may charge a fee for the prospective employee or volunteer to cover "all...costs attributable to the requirements imposed by this section." Paragraph (25) of the Legislative Counsel's Digest accompanying the bill states:

Existing law prohibits a county, city, city and county, or special district from hiring a person for employment or a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of specified offenses. Existing law requires a county, city, city and county, or special district to require each of those prospective employees and volunteers to complete an application that inquires as to whether that person has been convicted of one of those offenses, and imposes a screening requirement on the county, city, city and county, or special district with respect to those prospective employees and volunteers.

This bill would authorize a county, city, city and county, or special district to charge those prospective employees and volunteers a fee *to cover all of the county, city, city and county, or special district's costs attributable to those requirements.*³¹

Finance argues that the "2010 amendment to the Public Resources Code section 5164 is the "subsequent change in law" that allows the Commission to make a new test claim finding that the cost of the mandated program is not a cost mandated by the state." Finance maintains that

³⁰ Exhibit C, Test Claim (01-TC-11) Parameters and Guidelines, at p. 1.

³¹ Statutes 2010, chapter 719 (SB 856) Legislative Counsel's Digest, paragraph (25) [uncodified].

“[a]s a result of the subsequent change in law, local agencies may charge a fee to cover all of their costs attributable to the mandated activities in Public Resources Code section 5164.”³²

B. Section 17556(d) is Not Self-Executing, but Requires Commission Action Pursuant to Section 17570, Where a Commission Decision on the Test Claim Statutes has been Previously Adopted.

Government Code section 17556(d) provides that the Commission “shall not find costs mandated by the state, as defined in Section 17514” if the Commission finds that “the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The California Supreme Court upheld the constitutionality of Government Code section 17556(d), in *County of Fresno v. State of California*.³³ The court, in holding that the term “costs” in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require 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*.³⁴

Accordingly, in *Clovis Unified School District v. Chiang*, the court found that the Controller’s office was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts’ authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is that “[t]o the extent 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.”³⁵ The court further noted that, “this basic principle flows from common sense as well. As the

³² Exhibit A, Request for Redetermination, at p. 6.

³³ *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

³⁴ *Id.*, at p. 487.

³⁵ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”³⁶

Section 17556(d) further provides that the limitation “applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued. In the context of fee authority enacted *after the test claim decision* on the subject matter has been adopted, an analysis under section 17556(d) cannot be entertained absent the redetermination process provided in section 17570. The Commission’s process is the sole and exclusive venue in which eligible claimants vindicate the reimbursement requirement of article XIII B, section 6, and the Commission’s decision on a test claim is final and binding, absent judicial review.³⁷ A later-enacted statute providing fee authority for a mandated program cannot, of its own force, undermine the Commission’s mandate determination in a prior test claim decision. Section 17570 thus provides the mechanism for considering section 17556(d) when there is a subsequent change in law, as defined, “material to the prior test claim decision, that may modify the state’s liability” pursuant to article XIII B, section 6.

“Subsequent change in law,” is defined in section 17570(a)(2) 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 17551.³⁸

Here, the amendments effected by Statutes 2010, chapter 719, providing local government with authority to charge a fee for costs associated with screening prospective employees or volunteers, implicate a section 17556(d) analysis, and therefore the amendments constitute a subsequent change in law, as defined.

C. Finance has made an Adequate Showing that the State’s Liability has been Modified.

Finance brings this request to adopt a new test claim decision relying on Government Code section 17556(d), and Statutes 2010, chapter 719 (SB 856). Statutes 2010, chapter 719 constitutes, by definition, a subsequent change in law, as discussed above.

The issue for this first hearing is whether Finance has made an adequate showing that the state’s liability has been modified based on a subsequent change in law. The Commission shall find that the requester has made an adequate showing if it finds “that the request, when considered in

³⁶ *Ibid.*

³⁷ *CSBA I, supra*, 171 Cal.App.4th 1183, at pp. 1199-1200.

³⁸ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”³⁹

Here, a section 17556 analysis, presuming, as the Commission must, the constitutionality of the Government Code, would likely result in a finding that the fees authorized by the amended code section are sufficient to fully fund the costs of the program and so defeat a mandate finding. If the “local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service” the Commission is proscribed from finding increased costs mandated by the state. It is sufficient, at this time, to determine that there is a substantial possibility that the requester will prevail at the second hearing, on the basis of section 17556(d), and the manner in which the test claim statute has been modified by a subsequent change in law.

V. CONCLUSION

Based on the foregoing, the Commission finds that Finance has made a sufficient showing at this first hearing to proceed to a second hearing to determine whether to adopt a new test claim decision.⁴⁰ The Commission hereby directs Commission staff to notice the second hearing and to prepare a full mandates analysis on the issue of whether the CSM shall adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision in 01-TC-11.

³⁹ Code of Regulations, title 2, section 1190.05.

⁴⁰ See Government Code section 17570(d) (Stats. 2010, ch. 719 (SB 856)).

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/18/13

Claim Number: 12-MR-02

Issue: Local Recreational Areas: Background Screenings (01-TC-11)

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