BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 41320, 41320.1, 41320.2, 4120.3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328, as added and amended by Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapters 759 and 962; Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1002; Statutes of 1995, Chapters 50 and 525; Filed on December 30, 1997 By the Alameda County Office of Education, Claimant.	No. CSM 97-TC-14 *Emergency Apportionments* 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 January 25, 2001)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard this test claim on October 26, 2000 and November 30, 2000, during regularly scheduled hearings.

On October 26, 2000, Mr. Keith Petersen appeared for the Alameda County Office of Education, Mr. Daniel Stone, Deputy Attorney General and Mr. Lynn Podesto, appeared for the Department of Finance.

On November 30, 2000, Mr. Keith Peterson, appeared for the Alameda County Office of Education. Mr. Dan Troy, Mr. Lynn Podesto, and Mr. Daniel Stone, Deputy Attorney General, appeared for the Department of Finance.

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

The Commission, by a vote of 5 to 2, denied this test claim.

BACKGROUND AND FINDINGS

This test claim relates to the restrictions and requirements placed upon school districts when requesting an emergency apportionment.

In 1971, the Legislature enacted Education Code section 41320.2, formerly Education Code section 17311, which enabled a school district to request an emergency apportionment from the state whenever it determined that its revenues were less than the amount necessary to meet its current year expenditure obligations. Prior to enactment of the test claim legislation, as a condition of receiving an emergency apportionment, a school district and the County Superintendent of Schools (CSS) were required to perform the following administrative activities:

School Districts

1. School districts were required to provide the Superintendent of Public Instruction (SPI) with the following:
    a. A report of the school district's fiscal conditions conducted by an independent auditor approved by the CSS.
    b. A written evaluation of the school district's fiscal management plan conducted by a consultant approved by the CSS.
    c. A plan to resolve the school district's fiscal problems adopted by the governing board.[1]
2. The governing board of a school district, in its annual budget report for the succeeding year in which it requested apportionment, was required to expressly indicate how it would resolve its fiscal problems.[2]
3. The emergency apportionment was required to be repaid in three years, or less, with the interest rate based on the most recent sale of state bonds.[3]
4. Each year the SPI was required to withhold apportionment proceeds from the state school fund for the amount due on the emergency apportionment.[4]

The County Superintendent of Schools

1. The CSS was required to review all reports, evaluations and plans and submit a copy of the documents to the SPI, Legislative Audit Committee, the Joint Legislative Budget Committee and the Department of Finance (DOF).[5]
2. The CSS was required to make a follow-up review on action taken and to submit a report to the SPI within eighteen months of disbursement of emergency apportionments.[6]

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[1] Education Code section 41320, (formerly Education Code section 17325).

[2] Education Code section 41321, (formerly Education Code section 17326).

[3] Education Code section 41323, (formerly Education Code section 17328).

[4] Education Code section 41324, (formerly Education Code section 17329).

[5] Education Code section 41320, (formerly Education Code section 17325).

Summary of Test Claim Legislation

In 1981 and continuing through 1995, the Legislature enacted, repealed, amended, and renumbered various sections of the test claim legislation. These changes further increased the administrative activities performed by school districts and CSSs, and provided that County Offices of Education (COE) could be responsible for forty percent of all administrative costs associated with emergency apportionments exceeding two hundred percent of a school district's fiscal reserves.

Loans up to two hundred percent of a school district's fiscal reserves

Under the test claim legislation, in order for a school district to receive an emergency apportionment from the state, it must adopt a fiscal plan for resolving the financial problems of the district.[7] As part of its fiscal plan, an auditor must report on the financial and budgetary controls of the district and a qualified management consultant must provide a written management review of the district.[8] Also, the school district must develop a schedule to repay the emergency apportionment.[9]

Additionally, the school district must accept the appointment of a trustee who will monitor and review the operation of the district until the emergency apportionment is repaid, the school district has adequate fiscal controls in place, and the SPI has determined the school district's compliance with the approved fiscal plan is likely.[10]

Finally, the school district must prepare an annual financial condition report until the emergency apportionment is repaid.[11] The trustee must review, approve, and forward the financial condition report to the CSS, SPI, and State Controller's Office (SCO).[12]

When a school district requests an emergency apportionment, the CSS must review, comment on, approve, and submit the district's fiscal plan to the SPI, Auditor General, the Joint Legislative Budget Committee, DOF and the SCO.[13] The CSS must also review and comment on the school district's repayment schedule and then forward it to the SPI for approval.[14]

As to repayment, emergency apportionments must be repaid within five years with interest based upon the State Pooled Money Investment Account. [15] Before the school district is allowed to repay the emergency apportionment, an audit of the school district must be completed to

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[6] Education Code section 41322 required, (formerly Education Code section 17327).

[7] Education Code section 41320, subdivision (a).

[8] Education Code section 41320, subdivision (b).

[9] Education Code section 41320, subdivision (e).

[10] Education Code section 41320.1, subdivision (a)(3).

[11] Education Code section 41321.

[12] Education Code section 41321.

[13] Education Code section 41320, subdivisions (b) and (c).

[14] Education Code section 41320, subdivisions (e).

[15] Education Code section 41323.

determine if the district's fiscal systems are adequate.[16] If the school district's fiscal systems are inadequate the SPI may retain the trustee until the school district corrects any shortcomings.[17]

The school district is liable for all costs associated with its request for emergency apportionments. This includes all costs incurred by the CSS.[18] In addition to reimbursing the CSS, the school district is responsible for the cost of the trustee and necessary trustee staff and their expenses.[19] Also, the school district is responsible for the cost of annual SCO audits and audits conducted to determine the adequacy of the school district's fiscal systems.[20]

Loans in excess of two hundred percent of a school district's fiscal reserves

If a request for an emergency apportionment exceeds two hundred percent of a school district's fiscal reserves, then the school district must agree to perform additional activities. As part of these activities, the governing board of the school district shall discuss the need for such an apportionment and convene a public hearing to receive testimony from parents, employees, and members of the community.[21] Instead of a trustee being appointed, the SPI assumes control of the school district through an administrator.[22] During the period in which the administrator assumes control of the school district, the school board serves only as an advisory body.[23] The administrator is appointed by the SPI and CSS with salary and benefits paid for by the school district.[24] The administrator is required to conduct a management review and prepare a recovery plan. This requires the administrator to perform the following activities: (1) submit annually, a multi-year recovery plan; (2) prepare and submit annual reports on the financial condition of the school district; and (3) review and approve all reports and plans that the school district is normally required to prepare.

As to costs, school districts are responsible for sixty percent of the total administrative costs for emergency apportionments exceeding two hundred percent of fiscal reserves.[25] The test claim legislation requires the COE to pay for the remaining forty percent, unless it receives a waiver from the State Board of Education (SBE).[26] If the COE receives a waiver, then the school district is responsible for all costs.

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[16] Education Code section 41320.1, subdivision (a)(4).

[17] *Ibid.*

[18] Education Code section 41320, subdivision (f).

[19] Education Code section 41320.1, subdivision (a)(1).

[20] Education Code section 41320.1, subdivisions (a)(4) and (d).

[21] Education Code section 41326, subdivision (a).

[22] Education Code section 41326, subdivision (b).

[23] Education Code section 41326, subdivision (c).

[24] Education Code section 41326, subdivision (b)(4).

[25] Education Code section 41328, subdivision (a).

[26] Education Code section 41328, subdivision (b).

Claimant's Position

It is claimant's position that the activities described above constitute a state mandate upon school districts, county superintendents of schools, and county offices of education.

State Agency Positions

California Department of Education

The California Department of Education (CDE) asserts that an emergency apportionment is the result of a request initiated by a school district and appropriated by the Legislature.[27] Therefore, the CDE concludes that all costs incurred by school districts requesting emergency apportionments are not subject to state subvention.

In addition, CDE points out, that under the test claim legislation, COEs are eligible for a waiver of costs associated with emergency apportionments exceeding two hundred percent of a school district's fiscal reserves, if it can demonstrate compliance with certain statutory requirements. Thus, CDE concludes that COEs should not be entitled to state subvention for administrative costs of emergency loans in excess of two hundred percent of a school district's fiscal reserves.[28, 29]

Department of Finance

It is DOF's position that the test claim legislation does not impose a state mandated program on school districts within the meaning of section 6, article XIII B, because the school district's request for an emergency apportionment is discretionary. In support of this position, DOF cites to *Madsen* v. *Oakland Unified School District*, (1975) 45 Cal.App.3d 574, which held that the provisions of the test claim legislation are discretionary.

In the alternative, DOF contends that the CSS is not entitled to reimbursement since Education Code section 41320 provides that school districts requesting emergency apportionments must reimburse the CSS for its incurred costs. Accordingly, DOF concludes that since the CSS has the ability to offset its costs the Commission is prohibited from finding costs mandated by the state.

DOF further asserts that the test claim legislation does not impose a new state mandated program upon COEs since the test claim legislation merely shifts fiscal responsibility between local agencies without mandating additional activities. As a result, DOF contends that the test claim legislation is not subject to reimbursement for increased costs under article XIII B.

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[27] The State Department of Education is administered through (1) the State Board of Education, which is the governing and policy determining body of the Department and (2) the Director of Education who is responsible for all executive and administrative functions of the Department and is the executive officer of the State Board of Education. *See* Education Code sections 33301, 33303. The State Superintendent of Public Instruction oversees the schools of this state and executes, under the direction of the State Board of Education, the policies that have been decided upon by the Board. The Superintendent is also ex-officio the director and executive director of the State Department of Education. *See* Education Code sections 33301-33303, 33111, 33112.

[28] *Ibid*.

[29] CDE asserts that school districts are not entitled to reimbursement under Government Code section 17556, subdivision (a), which prohibits the Commission from finding costs mandated by the state for local agencies whom request legislative authority to implement the test claim statute. The Commission finds that it is not necessary to address this issue, since the test claim does not impose reimbursable state-mandated activities upon school districts.

Finally, DOF maintains that current Education Code section 41320.2, which authorizes school districts to request an emergency apportionment, was originally enacted in 1971 as Education Code section 17325 and remains substantially unchanged. DOF also notes that Education Code section 41323, which increases the repayment period from three years to five years, was also enacted in 1971, as Education Code section 17327, and it too is substantially unchanged. Therefore, DOF concludes that, since the activities under these code sections were required before 1975, no reimbursement is authorized.

COMMISSION FINDINGS

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental entities. Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[30]

The test claim legislation involves the administration of a school district's request for an emergency apportionment. California courts have found public education in California to be a peculiarly governmental function administered by local agencies as a service to the public.[31] Moreover, the test claim legislation, which requires school districts, CSSs and COEs to administer the emergency apportionment process, imposes unique requirements upon these entities that do not apply generally to all residents and entities of the state. Thus, the Commission finds the administration of the school district budget process by school districts, CSSs and COEs constitutes a governmental function and imposes unique requirements on local agencies.[32]

However, the inquiry must continue to determine whether the activities constitute a new program or impose a higher level of service and if so, whether the newly required activity or increased level of service are state mandated.

Issue: Does the test claim legislation impose a reimbursable state mandated program within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514?

School Districts

Prior to enactment of the test claim legislation school districts were subject to specified requirements when requesting emergency apportionments from the state. Former Education Code section 17311, first enacted in 1971, provided school districts with the

[30] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

[31] *Long Beach Unified School Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 172 states, "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public."

[32] *Ibid.*

authority to request an emergency apportionment. Section 17311 was renumbered as Education Code section 41320.2,[33] and is one of the sections included in this test claim. Section 41320.2 remains relatively unchanged from its original form, and thus does not constitute a new program or higher level of service. However, even if this provision were newly enacted, the Commission finds it still would not constitute a new program or higher level of service since it does not require school districts to request an emergency apportionment.

Former Education Code section 17327, also enacted in 1971, established a three-year period in which school districts must repay their emergency apportionment. Education Code section 41323, also included in this test claim, re-codified section 17327 and extended the loan repayment period from three years to five years. Except for the extended repayment period, the Commission finds that section 41323 is relatively unchanged from the provisions in effect under prior law, and it does not impose a new program or higher level of service.

However, the remaining statutes alleged under the test claim legislation sets forth the following new procedures which are triggered when a school district requests an emergency apportionment:

[33] In 1976, Education Code section 17311 was renumbered to Education Code section 41310. In 1992, Education Code section 41310 was renumbered to Education Code section 41320.2.

Loans up to two hundred percent of a school district's fiscal reserves

- The school district must develop a repayment schedule and submit it to the CSS for review and comment. The CSS must then forward the repayment schedule to the SPI for approval.[34]
- The school district must reimburse the CSS for all costs associated with this process.[35]
- The school district must agree to the appointment of a trustee who is deemed an employee of the school district. The school district is responsible for paying the salary and cost of the trustee and necessary staff, who will monitor and review the operation of the district until the emergency apportionment is repaid.[36]
- The school district must reimburse the CSS for costs to review, comment on, approve and submit the district's fiscal plan to the Superintendent of Public Instruction (SPI), Auditor General, the Joint Legislative Budget Committee, DOF and the State Controller's Office (SCO).[37]
- The school district must reimburse the SCO for the cost of audits conducted to determine the adequacy of the school district's fiscal systems,[38] and the cost of annual audits until the district is fiscally solvent.[39]

Loans in excess of two hundred percent of a school district's fiscal reserves

- The school district must convene a public meeting to discuss the need for an emergency apportionment in excess of two hundred percent of a school district's fiscal reserves. [40]
- The school district must agree to let the SPI assume control of the school district through the appointment of an administrator, in lieu of a trustee. [41] The administrator is appointed by the SPI and CSS with salary and benefits paid for by the school district.

The Commission finds that the above-described procedures impose restrictions and procedures greater than that which existed prior to the enactment of the test claim legislation. However, the question remains as to whether these activities are state mandated.

DOF asserts that the test claim legislation did not impose a mandate on school districts within the meaning of section 6, article XIII B, because emergency apportionments are obtained at the option of the school district and are thus, discretionary. In further support of this position, DOF cites to the holding in *Madsen* v. *Oakland Unified School*.[42] In *Madsen*, a citizen-taxpayer

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[34] Statutes of 1987, Chapter 990, added Education Code section 41320, subsection (e).

[35] Statutes of 1987, Chapter 990, added Education Code section 41320, subsection (f).

[36] Statutes of 1987, Chapter 990, added Education Code section 41320.1.

[37] Statutes of 1987, Chapter 990, added Education Code section 41320, subdivision (c).

[38] Statutes of 1989, Chapter 1256, added Education Code section 41320.1, subsection (a)(4).

[39] Statutes of 1987, Chapter 990, added Education Code section 41320.1, subsection (d).

[40] Education Code section 41326, subdivision (a).

[41] Education Code section 41326, subdivision (b).

[42] *Madsen* v. *Oakland Unified School* (1975) 45 Cal.App.3d 574.

challenged that a grant from the City of Oakland to the Oakland Unified School District was prohibited under Education Code section 41320.2 (formerly Education Code section 17311). The plaintiff alleged that, in accordance with Education Code section 41320.2, the city was without authority to grant such funds to the school district. Instead, plaintiff maintained that school districts experiencing fiscal difficulties could only request an emergency apportionment from the state. The *Madsen* court, holding in favor of the school district, found Education Code section 41320.2 was discretionary.

The *Madsen* court stated:

> "The language of section [41320.2] is permissive: it provides that a school district '*may* request an emergency apportionment' to alleviate its deficit."[43] (Emphasis added.)

Accordingly, based on the *Madsen* court's findings, DOF concludes that the test claim legislation does not impose a state mandated program upon school districts, since school districts seek emergency apportionments at their discretion.

Likewise, CDE argues that school districts requesting emergency apportionments should not be eligible for state subvention, since all activities set forth in the test claim legislation result from a request initiated by the school district itself.

Claimant asserts that when a school districts experiences fiscal difficulties, they have no other choice but to seek an emergency apportionment from the state. As such, claimant contends that school districts are required to request emergency apportionments from the state despite the test claim statute's discretionary language. It is claimant's position that the *Madsen* case is "not factually relevant." and that "the cited opinion pertains to an affirmative defense and not the central question of law." Claimant asserts that the question before the *Madsen* court was whether the City of Oakland could make a grant to the school district, and not whether the school district could borrow funds from sources other than the state. To this end, claimant contends that *Madsen* cannot be relied upon for the proposition that a school district's request for an emergency apportionment is discretionary.[44]

The Commission disagrees. Education Code section 41320.2, the authority under which a school district may request an emergency apportionment, provides in pertinent part:

> "[A] school district . . . *may* request an emergency apportionment . . . subject to the requirements and repayment provisions of this article." (Emphasis added.)

Based on the plain language of the test claim statute it is clear that school districts "may" request an emergency apportionment. However, they are not required to do so. The test claim legislation merely provides a procedure for school districts to borrow funds. Thus, the school district, and not the state, imposes the requirements of the test claim legislation by requesting an emergency apportionment.

This conclusion is in accordance with the *Madsen* court's interpretation of Education Code 41320. The *Madsen* court, in its analysis of section 41320, specifically found that school

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[43] *Id*. at page 581.

[44] *Id.*

districts experiencing fiscal difficulties are not required to request emergency apportionments from the state, stating:

> "While the procedures outlined in section [41320 et seq.] are mandatory when a school district seeks an emergency apportionment under section [41320.2], there is no indication, anywhere, that the Legislature intended to make section [41320.2] the only recourse available to a school district suffering financial problems. The language of section [41320.2] is permissive: it provides that a school district '*may* request an emergency apportionment' (italics added) to alleviate its deficit." [45]

Based on the foregoing, the Commission finds that the test claim legislation does not impose a reimbursable state mandated program, since it does not require school districts to request an emergency apportionment.

County Superintendent of Schools

Prior to enactment of the test claim legislation, the CSS was subject to specified requirements whenever a school district requested an emergency apportionment from the state. Under the test claim legislation, a CSS must now perform the following additional requirements in conjunction with a school district's request for an emergency apportionment:

- The CSS must review, comment, approve and submit the school district's fiscal plan to the SCO, Auditor General and the Joint Legislative Budget Committee.[46, 47]
- The CSS must review, comment, and forward to the SPI the school district's repayment schedule.[48]

The Commission finds that the above-described procedures are greater than those which existed before the enactment of the test claim legislation. However, the question remains as to whether the test claim legislation imposes a reimbursable mandate upon CSSs.

Government Code section 17556, subdivision (d), provides in pertinent part:

> "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 hearing, the commission finds that:
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> "……"
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> "(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

DOF argues that the test claim legislation does not impose a reimbursable mandate on the CSS, since the test claim legislation provides that the requesting school district must reimburse the

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[45] *Ibid.*

[46] Statutes of 1987, Chapter 990, added Education Code section 41320, subdivision (c).

[47] Prior law requires the CSS to review, comment, approve and submit the school district's fiscal plan to the SPI, Auditor General, the Legislative Audit Committee and the DOF.

[48] Statutes of 1987, Chapter 990, added Education Code section 41320, subsection (e).

CSS for all costs pursuant to Education Code section 41320, subdivision (f). This section provides that a district requesting the apportionment *shall* reimburse the county superintendent of schools for the costs incurred by the superintendent. Thus, DOF concludes that the CSS's costs are completely offset under Education Code section 41320. Accordingly, DOF contends that the Commission is prohibited from finding costs mandated by the state.

Claimant maintains that the test claim statute requires school districts to reimburse their COEs for incurred costs, but does not empower the COE to charge fees for incurred costs related to a request for an emergency apportionment. Thus, claimant asserts that Government Code section 17556, subdivision (d), is not applicable to the current test claim legislation.

The Commission disagrees. Under Education Code section 41320, subdivision (f), the school district requesting the emergency apportionment is required to reimburse the CSS for its associated costs. Thus, the Commission finds that the CSS has the authority to levy fees sufficient to pay for the costs imposed by the test claim legislation. Accordingly, the Commission concludes that the Commission, pursuant to Government Code section 17556, subsection (d), is prohibited from finding that the test claim legislation imposes costs mandated by the state.

Based on the foregoing, the Commission finds that the test claim legislation does not impose a reimbursable state mandated program, since the requesting school district reimburses the CSS for all of its costs associated with the emergency apportionment.

County Office of Education

Prior to enactment of the test claim legislation, COEs were not required to incur any costs associated with a school district's request for an emergency apportionment.[49] In 1991, as part of the test claim legislation, the Legislature added Education Code section 41326.[50] This section provided that a school district's acceptance of an emergency apportionment exceeding two hundred percent of fiscal reserves constitutes an agreement by the district to the appointment of an administrator and to undertake additional duties. In 1991, under the same chapter, Education Code section 41328 was added to provide that *all* costs associated with emergency apportionments exceeding two hundred percent of fiscal reserves shall be borne by the *school district*.[51]

In 1992, Education Code section 41328 was re-enacted and amended to provide that school districts requesting an emergency apportionment in excess of two hundred percent of fiscal reserves shall bear sixty percent of the administrative cost, and the COE shall bear forty percent.[52] However, if the COE requests and is granted a waiver from the SBE, then the requesting school district bears the entire cost of the emergency apportionment.[53] If the waiver is granted,

[49] The test claim legislation does not require COEs to incur costs for emergency apportionments up to two hundred percent of a school district's fiscal reserves.

[50] Statutes of 1991, Chapter 1213.

[51] Statutes of 1991, Chapter 1213. This statute was repealed by its own terms, effective September 24, 1992.

[52] Costs do not include the principal and interest on emergency apportionments, which shall be paid by the school district. (Ed. Code, § 41328, subd. (a).)

[53] Statutes of 1992, Chapter 962.

the COE is not entitled to reimbursement, since it does not incur any costs associated with the test claim legislation.

It appears to be claimant's contention, in absence of a waiver, that the potential for shifting forty percent of a school district's costs to the COE constitutes a new program or higher level of service pursuant to article XIII B of the California Constitution.

It is DOF's position that a shift of costs does not constitute a new program or higher level of service within the meaning of section 6, article XIII B. DOF asserts, "a new program within the meaning of Article XIII B, section 6 is one which transfers fiscal responsibility for the program from the State to local government." DOF maintains that the state was never responsible for costs associated with emergency apportionments and such costs have always been the financial responsibility of school districts. Therefore, DOF concludes that the state, by enacting the test claim legislation, which could hold COEs liable for forty percent of costs associated with emergency apportionments, merely shifted costs between local entities. Accordingly, DOF concludes that COEs are not entitled to reimbursement.

The issue of whether a shift of financial responsibility constitutes a new program or higher level of service was addressed by the California Supreme Court in *County of Los Angeles.*[54] In this case the Supreme Court held that the imposition of additional costs alone does not equate to a reimbursable state mandate under section 6, article XIII B. Rather, this Court found that it is paramount for the additional costs to result from new programs or increased levels of service mandated by the state. The Supreme Court, at page 56, opined:

> "If the Legislature had intended to continue to equate 'increased level of service' with 'additional costs,' then the provision would be circular: 'costs mandated by the state' are defined as 'increased costs' due to an 'increased level of service,' which, in turn, would be defined as 'additional costs.' We decline to accept such an interpretation."[55]

The California Supreme Court affirmed its holding in *County of Los Angeles* in its the case of *Lucia Mar Unified School Dist.* v. *Honig,* as follows:

> "We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state."[56]

In *City of San Jose* v. *State of California*,[57] as well as *County of Los Angeles*, the courts have further held that where local government continues to administer a program and a shift in costs occurs between local entities, no reimbursement is required. In *City of San Jose*, the court analyzed Government Code section 29550 in light of article XIII B, section 6. That section authorized counties to charge cities and other local agencies for the costs of booking persons arrested by the city or other local agency into county jails. The City contended that the statute

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[54] *County of Los Angeles, supra*, 43 Cal.3d 46, 55-56.

[55] *Ibid.*

[56] *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[57] *City of San Jose* v. *State of California* (1996) 45 Cal.App.4th 1802.

imposed a new program under article XIII B, section 6, since there was a shift of funding from the state to the city. Thus, the City maintained that the *Lucia Mar* decision governed the claim.

The *City of San Jose* court disagreed with the City's contention. The court held that the shift in funding was not from the state to the local agency, but from the county to the city and, thus, *Lucia Mar* was inapposite. The court stated:

> "The flaw in the City's reliance on Lucia Mar is that in our case the shift in funding is not from the state to the local entity but from the county to the city. In *Lucia Mar*, prior to the enactment of the statute in question, *the program was funded and operated entirely by the state. Here, however, at the time section 29550 was enacted, and indeed long before that statute, the financial and administrative responsibility associated with the operation of county jails and detention of prisoners was borne entirely by the county*." [58] [Emphasis added.]

The *City of San Jose* court concluded:

> "[F]or purposes of subvention analysis, it is clear that counties and cities were intended to be treated alike, as part of 'local government'; both are considered local agencies…. *[N]othing in article XIII B prohibits the shifting of costs between local governmental entities*."[59] [Emphasis added.]

Claimant asserts that *City of San Jose* is not applicable to the claim at hand. Claimant explains that in *City of San Jose*, counties were empowered to charge service fees to cities for the cost of booking and detaining arrestees in county jails. In contrast, claimant notes that "the mandated program here is new and the cost allocations for the district and county office were dictated by the legislature, not the result of any agreement between the two local agencies." Thus, claimant contends that the holding in *City of San Jose* should be limited to situations where the state has empowered one local agency to charge another local agency a service fee.

The Commission disagrees. The Commission finds that the holding in *City of San Jose* applies when the state has merely shifted costs between local agencies. In this case Education Code section 41328 merely shifted partial fiscal responsibility from school districts to COEs, both of which are local entities. The test claim legislation, other than shifitng some financial liability onto COEs, did not create a new program or impose new responsibilities on the COEs. Thus, *City of San Jose* is applicable to the test claim legislation.

Based on the foregoing, the Commission finds Education Code section 41328 does not mandate any new activities upon the COE. This section merely requires COEs to incur forty percent of the costs school districts were formerly required to expend. And as explained above, under specified circumstances, this requirement may be waived. Thus, in accordance with the *County of Los Angeles* and *City of San Jose*, the Commission finds a shift in costs from one local agency to another does not result in a reimbursable state mandated program.

CONCLUSION

[58] *Id*. at page 1812.

[59] *Id*. at page 1815.

The Commission concludes that the test claim legislation does not impose a reimbursable state mandated program within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.