

**COMMISSION ON STATE MANDATES**

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September 5, 2014

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: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
Mandate Redetermination Request, 13-MR-02  
First Hearing: Adequate Showing  
*Open Meetings Act/Brown Act Reform, (CSM-4257/4469)*  
Government Code Sections 54952, et al.  
California Department of Finance, Requester

Dear Mr. Byrne:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the draft proposed decision by **September 26, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

**Hearing**

This matter is set for hearing on **Friday, December 5, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about November 21, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Please contact Matt Jones at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM \_\_**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**DRAFT PROPOSED DECISION**

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, 54957.7;  
Statutes 1986, Chapter 641; Statutes 1993, Chapters 1136; 1137; 1138; Statutes  
1994, Chapter 239

As Alleged to be Modified by:

Proposition 30, General Election, November 6, 2012

*Open Meetings Act/Brown Act Reform, (CSM-4257/4469)*

13-MR-02

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On March 23, 1988, the Commission on State Mandates (Commission) adopted the *Open Meetings Act* test claim decision, CSM-4257.<sup>1</sup> On June 28, 2001, the Commission adopted the *Brown Act Reform* test claim decision, CSM-4469. On April 25, 2002, the Commission adopted consolidated parameters and guidelines for *Open Meetings Act/Brown Act Reform*, CSM-4257/4469. Those parameters and guidelines provide for reimbursement for a county, city, city and county, school district or special district for specified notice, agenda and other public disclosure related requirements required by Government Code sections 54952, 54954.2(a), 54954.3(a), 54957.1(a-c) and 54957.7(a-b), as those sections are added or amended by Statutes 1986, chapter 641; and Statutes 1993, chapters 1136, 1137, and 1138.

On July 19, 2005, Statutes 2005, chapter 72 (AB 138) became effective and directed the Commission to set aside its decisions, reconsiderations and parameters and guidelines in the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 test claims. On July 27, 2005, these decisions and parameters and guidelines were set aside by the Commission with an effective date of July 19, 2005 as required by Statutes 2005, chapter 72. However, the court in *California School Boards Association v. State of California* (2009)<sup>2</sup> held that “the Legislature

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<sup>1</sup> Parameters and Guidelines for *Open Meetings Act*, CSM-4257 were first adopted on December 4, 1991 and were amended on November 30, 2000, but those Parameters and Guidelines are no longer effective and so are not relevant to this decision.

<sup>2</sup> 171 Cal.App.4th 1183, at pp. 1198-1203.

cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside,” and therefore the directive in AB 138 constituted an unconstitutional violation of separation of powers principles.<sup>3</sup> The court therefore ordered the Commission to reinstate the test claim decisions and parameters and guidelines. The test claims and parameters and guidelines were therefore reinstated on September 27, 2009.

On November 6, 2012, the voters approved Proposition 30, also known as “The Schools and Local Public Safety Protection Act of 2012.”<sup>4</sup> Among other changes, Proposition 30 expressly stated that “[n]otwithstanding Section 6 of Article XIII B, or any other constitutional provision... [a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.”<sup>5</sup>

### **Procedural History**

On July 29, 2013, the Department of Finance (Finance) filed a request for redetermination of the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 test claims.<sup>6</sup> Finance asserts that Proposition 30 “has removed the state’s obligation to fund the mandates.”<sup>7</sup> The State Controller’s Office (Controller) submitted comments on the request, concurring with Finance’s conclusion that Proposition 30 has removed the state’s obligation to fund the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 programs.

### **Commission Responsibilities**

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>8</sup>

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<sup>3</sup> *Id.*, at pp. 1198-1203.

<sup>4</sup> Exhibit X, Text of Proposition 30, at p. 2.

<sup>5</sup> Article XIII, section 36(c)(3) (adopted November 6, 2012).

<sup>6</sup> Based on the July 29, 2013 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2012.

<sup>7</sup> Exhibit A, Request for Redetermination, at p. 1.

<sup>8</sup> Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.<sup>9</sup>

Therefore, the sole issue before the Commission at this first hearing is whether Finance, as the requester, has made an adequate showing that the state's liability has been modified pursuant to a subsequent change in law, as defined in section 17570.

### **Staff Analysis**

Proposition 30, adopted by the voters on November 6, 2012, added article XIII, section 36 to the California Constitution. Section 36(c)(3) of the California Constitution provides that:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

In the *Open Meetings Act* and *Brown Act Reform* test claim decisions, the Commission found state-mandated increased costs under Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. These code sections are all found within Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, as described in Section 36(c)(3).

Government Code section 17570 provides that a "subsequent change in law" includes "a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law..."<sup>10</sup> Here, article XIII, section 36 of the California Constitution does not clearly implicate either section 17556 or section 17514, but directly and explicitly states that activities under Chapter 9 of Part 1 of Division 2 of title 5 of the Government Code "shall not be a reimbursable mandate." Article XIII, section 36 of the California therefore constitutes a "subsequent change in law," because it expressly provides an exemption from reimbursement under article XIII B, section 6. Because article XIII, section 36 of the California Constitution was adopted after article XIII B, and because a more specific provision generally prevails over a more general one,<sup>11</sup> Proposition 30 is a valid exemption from the reimbursement requirement of article XIII B. Moreover, the Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.<sup>12</sup>

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<sup>9</sup> Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

<sup>10</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>11</sup> *People v. Ahmed* (2011) 53 Cal.4th 156, at p. 163 [citing *Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, at p. 942].

<sup>12</sup> California Constitution, article III, section 3.5.

Therefore, beginning on November 7, 2012, the effective date of Proposition 30, the requirements of “Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code [*i.e.*, Government Code sections 54950-54963]...shall not be a reimbursable mandate under Section 6 of Article XIII B.”<sup>13</sup>

Based on the foregoing, staff finds that the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the request for a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for January 23, 2015.

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

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<sup>13</sup> See California Constitution, article XIII, section 36 (as added by Proposition 30, November 6, 2012).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

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

Government Code Sections 54952, 54954.2,  
54954.3, 54957.1, 54957.7;

Statutes 1986, Chapter 641; Statutes  
1993, Chapters 1136; 1137; 1138;  
Statutes 1994, Chapter 239

As Alleged to be Modified by:

Proposition 30, General Election,  
November 6, 2012

Filed on July 29, 2013

By the Department of Finance, Requester.

Case No.: 13-MR-01

*Open Meetings Act/Brown Act  
Reform, (CSM-4257/4469)*

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

*(Adopted December 5, 2014)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on December 5, 2014. [Witness list will be included in the adopted 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 1190 et seq., and related case law.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

**SUMMARY OF 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 *Open Meetings Act/Brown Act Reform*, CSM-4257/4469 mandates has been modified based on a subsequent change in law. Specifically, Proposition 30, adopted by the voters on November 6, 2012 added article XIII, section 36 to the California Constitution, which expressly declares that activities under Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code (commencing with section 54950) "shall not be a reimbursable mandate" under article XIII B,

section 6. The approved activities in the CSM-4257 and CSM-4469 test claims result from Government Code provisions within chapter 9, and are therefore within the scope of article XIII, section 36 of the California Constitution. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

## COMMISSION FINDINGS

### I. Chronology

- 3/23/1988 The Commission adopted a statement of decision in the *Open Meetings Act* test claim, CSM-4257.<sup>14</sup>
- 12/4/1991 The Commission adopted parameters and guidelines for *Open Meetings Act*, CSM-4257.
- 11/30/2000 The Commission adopted amended parameters and guidelines for *Open Meetings Act*, CSM-4257.
- 6/28/2001 The Commission adopted a statement of decision in the *Brown Act Reform* test claim, CSM-4469.<sup>15</sup>
- 4/25/2002 The Commission adopted consolidated parameters and guidelines for *Open Meetings Act/Brown Act Reform*, CSM-4257/4469.<sup>16</sup>
- 7/19/2005 The Legislature enacted Statutes 2005, chapter 72 (AB 138), which required the Commission to set aside the test claim decisions and parameters and guidelines in CSM-4257 and CSM-4469.
- 9/27/2005 The Commission set aside CSM-4257 and CSM-4469, effective 7/19/2005.<sup>17</sup>
- 3/9/2009 The Third District Court of Appeal held that AB 138 violated separation of powers principles, and ordered the Commission to reinstate the prior decisions in CSM-4257 and CSM-4469.<sup>18</sup>
- 9/25/2009 The Commission reinstated CSM-4257 and CSM-4469, test claim decisions and parameters and guidelines, pursuant to *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183.<sup>19</sup>
- 11/6/2012 The voters adopted Proposition 30, which added article XIII, section 36 to the California Constitution.<sup>20</sup>

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<sup>14</sup> Exhibit B, Test Claim Statement of Decision CSM-4257.

<sup>15</sup> Exhibit C, Test Claim Statement of Decision CSM-4469.

<sup>16</sup> Exhibit D, Parameters and Guidelines.

<sup>17</sup> Exhibit D, Parameters and Guidelines.

<sup>18</sup> *California School Boards Association v. State* (2009) 171 Cal.App.4th 1183, at pp. 1198-1218.

<sup>19</sup> Exhibit D, Parameters and Guidelines.

7/29/2013 The Department of Finance filed a request for redetermination on CSM-4257 and CSM-4469.<sup>21</sup>

9/9/2013 The Controller submitted written comments on the redetermination request.<sup>22</sup>

## II. Background

### A. The Commission has Approved Test Claims on the Open Meetings Act and Brown Act Reform and has Adopted Consolidated Parameters and Guidelines for these Mandates.

Statutes 1986, chapter 641 added section 54954.2 to the Government Code, which requires a local agency to post an agenda 72 hours before a regular meeting, describing the items to be discussed at the meeting and specifying the time and place of the meeting. Statutes 1986, chapter 641 also added section 54954.3, which generally requires all regular meetings to provide an opportunity for public comment. The Commission found these statutes to impose reimbursable costs mandated by the state, in CSM-4257.<sup>23</sup>

Statutes 1993, chapters 1136, 1137, and 1138 added or amended Government Code sections 54952, 54954.2, 54957.1, and 54957.7. The Commission found that these test claim statutes enlarged the definition of “legislative bodies” subject to the requirements of section 54952.2; required closed session items to be listed on a meeting agenda; required the reporting of closed session items after closed session and the provision of closed session documents; and required the disclosure of certain closed session items prior to and after the closed session.<sup>24</sup>

In the consolidated parameters and guidelines for the two test claims, the reimbursable activities are described as follows:

#### A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting. (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

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<sup>20</sup> Exhibit X, Text of Ballot Measure, Proposition 30.

<sup>21</sup> Exhibit A, Request for Redetermination.

<sup>22</sup> Exhibit E, Controller’s Comments on Request for Redetermination.

<sup>23</sup> See Exhibit B, Test Claim Statement of Decision CSM-4257.

<sup>24</sup> See Exhibit C, Test Claim Statement of Decision CSM-4469.



Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

#### B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
  - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)

- b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
  - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
  - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
  - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)
  4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of Brown Act Reform. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.

- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).<sup>25</sup>

### **III. Positions of the Parties, Interested Parties, and Interested Persons**

#### **A. Department of Finance, Requester**

Finance argues that “[b]y adding Article XIII, Section 36, subdivision (c)(3) to the Constitution, the electorate stated the reimbursable requirements of the Open Meetings Act and Brown Act Reform mandates are no longer reimbursable mandates.”

#### **B. State Controller**

The Controller states that it “concur[s] that Proposition 30 is the subsequent change in law that eliminated reimbursement of state mandated costs” for the Open Meetings Act and Brown Act Reform test claims.

### **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.<sup>26</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>27</sup> In making its decisions, the Commission must strictly construe

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<sup>25</sup> Exhibit D, Parameters and Guidelines.

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

<sup>27</sup> *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.”<sup>28</sup>

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, analysis of section 17556(f), 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.”<sup>29</sup> A thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

**A. Proposition 30 Constitutes a Subsequent Change in Law, as Defined.**

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. 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

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<sup>28</sup> *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.

<sup>29</sup> 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.

in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>30</sup>

Under this definition, then, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) another change in mandates law. This request for redetermination does not allege a subsequent change in law that requires a finding of a new cost mandated by the state pursuant to section 17514, or a finding that a cost is not mandated by the state pursuant to section 17556. Rather, the request is based on the plain language exception to reimbursement adopted in Proposition 30 and, thus, is alleged as another subsequent change in mandates law. Article XIII, section 36 of the California Constitution, adopted by the voters November 6, 2012, provides, in pertinent part:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.<sup>31</sup>

The test claim statements of decision and parameters and guidelines for CSM-4257 and CSM-4469 found reimbursable activities imposed by Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. Chapter 9, Part 1, Division 2 of title 5 of the Government Code includes sections 54950 through 54963. Therefore, all code sections found to impose activities in test claims CSM-4257 and CSM-4469 are within Chapter 9, and pursuant to California Constitution article XIII, section 36(c)(3), “shall not be a reimbursable mandate...”

California Constitution article XIII, section 36(c)(3), adopted November 6, 2012 is “a change in mandates law,” as defined in Government Code section 17570. Article XIII, section 36 of the California Constitution directly invokes article XIII B, section 6, and states that a specified chapter of the Government Code, which contains a mandate previously approved by the Commission, cannot impose a *reimbursable* mandate under section 6. Proposition 30 was codified as article XIII, section 36 of the California Constitution, and is therefore on equal footing with article XIII B, section 6. And, being later-enacted, article XIII, section 36 is presumed to take precedence.<sup>32</sup> In addition, a more specific provision of law controls over a more general provision.<sup>33</sup> Therefore, to the extent that article XIII, section 36 conflicts with article XIII B, section 6, the former should be treated as an exception to the latter.<sup>34</sup> Moreover,

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<sup>30</sup> Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

<sup>31</sup> California Constitution article XIII, section 36(c)(3), adopted November 6, 2012.

<sup>32</sup> *People v. Moody* (Cal. Ct. App. 3d Dist. 2002) 96 Cal.App.4th 987.

<sup>33</sup> *People v. Ahmed* (2011) 53 Cal.4th 156, at p. 163 [citing *Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, at p. 942].

<sup>34</sup> *People v. Superior Court* (2002) 28 Cal.4th 798, at p. 809.

the Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.<sup>35</sup>

Based on the foregoing, the Commission finds that article XIII, section 36 of the California Constitution, added by Proposition 30 on November 6, 2012, constitutes a subsequent change in law, as defined.

**B. The Requester Has Made an Adequate Showing that the State’s Liability Has Been Modified Based on a Subsequent Change in Law.**

At this hearing, the Commission is required to determine whether “the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>36</sup> If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.<sup>37</sup>

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.<sup>38</sup> Here, the subsequent change in law is an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 54950-54963. Both articles XIII B, section 6 and XIII, section 36 “have equal dignity, as constituents of the state Constitution.”<sup>39</sup> The provisions therefore should be interpreted in a manner that would harmonize their effects, if possible.<sup>40</sup> If it is not possible to reconcile two potentially conflicting provisions, “special provisions control more general provisions, and the general and special provisions operate together, neither working the repeal of the other.”<sup>41</sup> In addition, “where two constitutional provisions conflict, the one that was enacted later in time controls.”<sup>42</sup> Therefore, article XIII, section 36, enacted by Proposition 30, to the extent that it provides an exemption from the reimbursement requirement of article XIII B, section 6, is presumptively controlling. Section 36 is both later-enacted, and more specific, than article XIII B, section 6; it provides an

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<sup>35</sup> California Constitution, article III, section 3.5.

<sup>36</sup> Code of Regulations, title 2, section 1190.05.

<sup>37</sup> Government Code section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).

<sup>38</sup> California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

<sup>39</sup> *Miller v. Superior Court* (1999) 21 Cal.4th 883, at p. 892.

<sup>40</sup> *Ibid.*

<sup>41</sup> *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

<sup>42</sup> *Crawford v. Huntington Beach Union High School District* (2002) 98 Cal.App.4th 1275, at p. 1286.

exemption from the subvention requirement pertaining only to a single chapter of the Government Code.

**V. Conclusion**

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state's liability has been modified based on a subsequent change in law, and a second hearing is required to determine whether to adopt a new test claim decision to reflect the state's modified liability.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 5, 2014, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
Mandate Redetermination Request, 13-MR-02  
First Hearing: Adequate Showing  
*Open Meetings Act/Brown Act Reform, (CSM-4257/4469)*  
Government Code Sections 54952, et al.  
California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 5, 2014 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
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## Mailing List

**Last Updated:** 9/5/14

**Claim Number:** 13-MR-02

**Matter:** Open Meetings Act/Brown Act Reform (CSM-4257/4469)

**Requester:** Department of Finance

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