

**ITEM 5**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**  
**AND PROPOSED STATEMENT OF DECISION**

Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6,  
47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652

Government Code Section 3540.1

Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058

*Charter Schools IV*  
03-TC-03

San Diego Unified School District, Claimant

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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 1183.07 of the Commission's regulations.

In addition, since the draft staff analysis was issued, the claimant filed a declaration from an employee of the San Diego County of Education alleging that activities required by the test claim statutes to be performed by county school agencies have resulted in costs mandated by the state exceeding \$1,000. With this declaration, the analysis has been revised to include findings and analyses on the statutes as they affect county boards of education and county superintendents of schools.

**EXECUTIVE SUMMARY**

**Overview**

This test claim addresses the following statutory amendments relating to charter schools.

Collective bargaining for charter schools

The test claim statutes enacted in 1999 subject charter schools to the Educational Employment Relations Act (EERA). Since 1976, the EERA has governed labor relations in California public schools.

The EERA creates a process for groups of school district employees to organize and become represented by an employee organization, and states the scope of representation is "limited to matters relating to wages, hours of employment, and other terms and conditions of employment." The EERA also defines the rules for negotiations, mediation, and dispute of grievances, and it establishes the Public Employment Relations Board to administer the EERA and referee labor disputes.

The test claim statutes require each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school...." The EERA defines "public school employer" as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code."

If the charter school is not deemed a public school employer, the school district where the charter is located is deemed the public school employer for the purposes of the EERA.

#### Petition requirements for the establishment of charter schools and countywide charter schools

The petition requirements for proposed charter schools that are considered by K-12 school districts, pursuant to Education Code section 47605, were amended by the 2002 statute to require the petition to include identification of a single charter school that will operate in the geographic boundaries of the school district, except as specified. If the charter school is to operate at multiple sites in the district, it must identify those sites in the petition, which is subject to approval by the school district governing board. If the charter school is to serve high school pupils, the charter must also include a description of how the school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements, as specified. Petitions must also include a description of the procedures to be used if the charter school closes, including a final audit of the school to determine the disposal of assets and liabilities and the transfer of pupil records. The 2002 legislation also restricted the geographic location of a charter school, allowing it to locate outside its school district, but within the county of the district, only under specified circumstances.

If the school district denies the petition for any of the reasons specified in Education Code section 47605, the petitioner may submit the petition on appeal to the county board of education. The county board of education is then required to review, consider, and hold a public hearing on the petition. The county's review is required before the petitioner can submit its petition to the State Board of Education.

The 2002 test claim statute also added Education Code section 47605.6 to address the petition process for the proposed operation of countywide charter schools. Under this statute, county boards of education are required to hold a public hearing on the petition, and consider specified information, including whether the proposed charter school has a reasonable justification for why it could not be established by petition to a school district. The county board of education may approve a countywide petition, as specified in statute, if it determines that the proposed charter petition is consistent with sound educational practice.

#### Oversight and accountability of charter schools

The 2002 test claim statute was enacted to increase the oversight and accountability of charter schools. Consistent with this purpose, the Legislature amended Education Code sections 1628 and 42100 to require that each charter school approve an annual statement of its receipts and expenditures and file it with the entity that approved the charter. If that entity is a school district, the district files it with the county superintendent of schools. The county superintendent of schools is then required to verify the mathematical accuracy of the charter schools' statements and transmit them to the Superintendent of Public Instruction.

The 2002 test claim statute added Education Code section 47604.4 to authorize a county superintendent of schools to investigate and monitor the operation of a charter school located within the county upon receipt of a written complaint of a parent or other information. This authority is provided in addition to the county's specific duty as a chartering authority to monitor the charter schools it has approved. Under those sections, the chartering authority (whether the

authority is a K-12 school district or a county board of education) is specifically required to visit each charter school annually, ensure that the charter school is in compliance with all required reports, and monitor the fiscal condition of the charter school.

### **Procedural History**

The test claim was filed on August 29, 2003 by the San Diego Unified School District. The Department of Finance filed comments on January 23, 2004. The claimant filed rebuttal comments on May 12, 2004. A draft staff analysis was issued on November 18, 2011. On December 13, 2011, the claimant filed comments and a declaration of costs incurred for the San Diego County Office of Education. No other comments were received on the draft staff analysis.

### **Positions of Parties**

#### Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable state mandate for school districts, county offices of education, and charter schools.

#### State Agency Position

The Department of Finance argues that charter schools are not eligible claimants because establishing and maintaining charter schools is a discretionary act that is not mandated by the state, as is responding to inquiries from the chartering entity that granted the charter, and participating in judicial proceedings. Finance argues that school district oversight of schools in their districts has been a district responsibility since before 1975, so the oversight of charter schools is not a new program or higher level of service. Moreover, chartering entities have fee authority to recover costs for oversight and charter petition review. (Ed. Code, § 47613.)

According to Finance, there may be minor reimbursable activities to review new petition information if a school district reviews and denies a charter petition, but “these activities represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews.”

### **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts (i.e., local governments) are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local governments 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. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

## Claims

Claim	Description	Recommendation
Education Code sections 47605 & 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828.)	These provisions make charter schools subject to the EERA.	<i>Deny.</i> The Commission issued a prior final decision on these statutes in the <i>Charter Schools Collective Bargaining</i> test claim and does not have jurisdiction to reconsider these statutes.
Education Code statutes that impose activities on charter schools: Sections 42100(b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47652 (Stats. 2002, ch. 1058) and section 47626 (Stats. 1999, ch. 828).	Claimant seeks reimbursement for activities performed by charter schools.	<i>Deny.</i> There is no evidence in the record of costs mandated by the state incurred by charter schools for these activities.
Education Code statutes that impose activities on charter school petitioners: Sections 47605(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), 47605.6 (a)(1)(A) & (B), (a)(3) & (a)(4) (Stats. 2002, ch. 1058).	Claimant seeks reimbursement for activities of charter school petitioners that file petitions for the establishment of a charter school with a school district or county board of education.	<i>Deny.</i> Only local governments that are subject to the tax and spend provisions of article XIII B are eligible for reimbursement under article XIII B, section 6. Charter school petitioners are not local governments subject to article XIII B, section 6.
Education Code section 47605 (amended by Stats. 2002, ch. 1058).	Claimant seeks reimbursement for K-12 school districts and county boards of education to review additional information required to be included in the charter petition and on appeal of the charter petition, and to consider at an open meeting proposed material revisions to an already approved charter to establish operations at one or more additional sites.  Finance asserts that school districts have fee authority under Education Code section 47613 for these review activities.	<i>Approve</i> new activities required to be performed by a K-12 school district and by a county board of education on appeal of the petition as a reimbursable state mandated program.  The fee authority in Education Code section 47613 does not cover the costs incurred to review additional information required to be included in a charter petition since petitioners are not yet a charter school receiving revenue.  However, the fee authority is intended to pay chartering authorities for their “supervisory oversight of a charter school, which includes the cost of considering proposed revisions to an existing petition approved by either a school district or county board of education. Staff recommends that the fee authority in Education Code section 47613 be identified as offsetting revenue in the parameters and guidelines for this activity.

<b>Claim</b>	<b>Description</b>	<b>Recommendation</b>
Education Code section 47605.6 (added by Stats. 2002, ch. 1058).	Claimant seeks reimbursement for the county board of education to receive, review and hold a public hearing on a proposed countywide charter school, and to consider at an open meeting proposed material revisions to an already approved charter to establish operations at one or more additional sites.	<i>Approve</i> as a reimbursable state-mandated program for county boards of education.  The fee authority in Education Code section 47613 does not apply to the costs incurred to review information required to be included in a charter petition since petitioners are not yet a charter school receiving revenue.  Staff recommends that the fee authority in Education Code section 47613 be identified as offsetting revenue in the parameters and guidelines for the cost of considering proposed revisions to an existing petition approved by the county board of education.
Education Code section 47604.4 (added by Stats. 2002, ch. 1058).	Claimant seeks reimbursement for county superintendent of schools to investigate and monitor the operation of a charter school located within the county upon receipt of a written complaint of a parent or other information.	<i>Deny</i> . The statute does not impose a state-mandated activity. The statute authorizes the county superintendent to act.
Education Code sections 1628 and 42100(a) (amended by Stats. 2002, ch. 1058).	Claimant seeks reimbursement for K-12 school districts to include with their annual statement of receipts and expenditures, the charter school's annual statement of receipts and expenditures and file them with the county superintendent of schools by September 15. Claimant also seeks reimbursement for the county superintendent of schools to verify the mathematical accuracy of the charter schools' statements and to transmit the statements to the Superintendent of Public Instruction.	<i>Approve</i> as a reimbursable state-mandated program for K-12 school districts and county superintendents of schools.  The fee authority in section 47613 does not apply to the duties imposed on the county superintendent of schools to verify the mathematical accuracy of the charter schools' statements and transmit those statements to the State Superintendent of Public Instruction. Those duties are not performed by the county as the charter authority.  The fee authority will be identified as offsetting revenue to the remaining activities mandated on the charter authority by these statutes.

## Staff Analysis

### Activities recommended for approval

Staff finds that the 2002 test claim statute, as it added and amended Education Code sections 47605, 47605.6, 1628, and 42100, mandates a new program or higher level of service beginning January 1, 2003, for the following activities:

A. When a K-12 school district receives a petition for the establishment of a charter school pursuant to Education Code section 47605(a), and when a county board of education receives a petition for the establishment of a charter school on appeal pursuant to Education Code section 47605(j), K-12 school districts and county boards of education are eligible to receive reimbursement for the following activities mandated by Education Code section 47605:

1. Review and consider at a public hearing the following additional information in the charter school petition:
  - a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.
  - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.
  - c) A description of where the charter school intends to locate in its description of facilities.
  - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
    - 1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
    - 2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
    - 3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.
2. If, after review, the school district or county board of education denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.

3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.
- B. When county boards of education receives a petition for the establishment of a countywide charter school pursuant to Education Code section 47605.6, county boards of education are eligible to receive reimbursement for the following activities:
1. Hold a public hearing not later than 60 days after receiving a petition to consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. As part of its consideration, the county board of education shall do the following:<sup>1</sup>
    - a) Require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education.
    - b) Require the petitioner or petitioners to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.
    - c) Determine whether the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services, and that cannot be served as well by a charter school that operates in only one school district in the county.
    - d) Determine whether granting the charter is consistent with a sound educational practice, and whether the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Education Code section 47605.
    - e) Give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Education Code section 54032.
  2. The county board of education shall also consider the information listed below and deny a petition for the establishment of a charter school if the board finds one or more of the following:
    - a) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
    - b) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

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<sup>1</sup> Education Code section 47605.6(a)(1), (h), (i).

- c) The petition does not contain the number of signatures required.
- d) The petition does not contain an affirmation of each of the following conditions listed in subdivision (d):
  - 1) That the charter school will meet all statewide standards and conduct the pupil assessments required pursuant to Education Code section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in non-charter public schools.
  - 2) That the charter school will consult with their parents and teachers regarding the school's educational programs.
- e) The petition does not contain reasonably comprehensive descriptions of all of the following:
  - 1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.
  - 2) The measurable pupil outcomes identified for use by the charter school.
  - 3) The method by which pupil progress in meeting those pupil outcomes is to be measured.
  - 4) The location of each charter school facility that the petitioner proposes to operate.
  - 5) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.
  - 6) The qualifications to be met by individuals to be employed by the school.
  - 7) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.
  - 8) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.
  - 9) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.
  - 10) The procedures by which pupils can be suspended or expelled.



- 11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
  - 12) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.
  - 13) A declaration whether or not the charter school shall be deemed the exclusive public school employer for the employees of the charter school for the purposes of the EERA.
3. The county board of education shall also consider whether to approve additional locations subsequently proposed by a charter school following the initial approval of the charter petition as a material revision of the charter at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located.
- C. K-12 school districts and county superintendents of schools are eligible for reimbursement for following activities pursuant to Education Code sections 1628 and 42100(a):
1. For school districts, following the approval of a charter petition and as the charter authority, to include the charter school's annual statement of receipts and expenditures with its own annual statement, and file the charter school's statement with the county superintendent of schools.
  2. For county superintendents of schools to receive from a school district (when the school district is the chartering authority) or receive directly from a charter school (when the county board of education is the chartering authority) the charter schools' annual statement of receipts and expenditures.
  3. For county superintendents of schools to verify the mathematical accuracy of the charter schools' annual statements of receipts and expenditures, and transmit the charter schools' statements to the State Superintendent of Schools.

Staff further finds that these activities impose costs mandated by the state pursuant to Government Code section 17514. Education Code section 47613 does authorize a chartering authority to charge fees to charter schools based on a small percentage of the charter school's revenue (either 1% or 3% depending on whether the charter school can obtain rent-free facilities from the chartering authority) "for the actual costs of supervisory oversight." "Charter authority" is defined in the statute to include a school district and county board of education that granted the charter to the charter school."

Staff finds that any revenue received pursuant to the "supervisory oversight" fee authority in Education Code section 47613 and applied to the charter authority activities listed above in A.3 (Ed. Code, § 47605(a)(4)), B.3 (Ed. Code, § 47605.6(a)(3)), C.1 (Ed. Code, § 42100(a)), and C.2 (Ed. Code, § 42100(a)), only when the county board of education is the charter authority and receives directly from a charter school its annual statement of receipts and expenditures), shall be identified as an offset and deducted from the costs claimed for these activities. There is no

evidence in the record that the fee, which is capped at a small percentage of charter school revenue, is sufficient to fund the costs of the mandated activities and, thus, the claim cannot be denied on the basis of the Government Code section 17556(d) exception to reimbursement.

Furthermore, the fee authority does not apply to a school district's or county board of education's review of a charter petition since a petitioners are not yet charter schools and do not receive revenue. The fee authority also does not apply to the activities mandated on county superintendents of schools to verify the mathematical accuracy of the charter schools' statements of receipts and expenditures and the transmittal of those statements to the State Superintendent of Public Instruction because these activities are not mandated on the county as the charter authority, but are required regardless of which entity approved the charter.

#### Activities recommended for denial

The claimant has pled several statutes that impose requirements on charter schools, charter school petitioners, and the state. These activities are not eligible for reimbursement for the following reasons:

- There is no documentary evidence in the record authenticated by declarations from employees of a charter school, or from persons authorized by a charter school who are competent to make assertions based on personal knowledge, information, or belief that charter schools have incurred costs mandated by the state for the following activities that that are performed by charter schools. Staff makes no findings in this analysis on whether charter schools are eligible claimants under article XIII B, section 6 of the California Constitution.
- Charter school petitioners are one or more persons seeking to establish a charter school, and are often organized by a group of teachers, parents and community leaders or by a community-based organization. Charter school petitioners are not local governments that are subject to the tax and spend provisions of article XIII B and, thus are not eligible to claim reimbursement under article XIII B, section 6.
- Activities imposed only on state agencies are not subject to reimbursement.

In addition, the claimant has pled the 1999 test claim statute as it amended Education Code sections 47605 and 47611.5, and Government Code section 3540.1. These statutes make the charter school, or the designated public school employer, subject to collective bargaining under the EERA (Gov. Code, § 3540 et seq.) These code sections, however, as amended by Statutes 1999, chapter 828, were the subject of a prior Commission decision that denied reimbursement. The Commission does not have jurisdiction to reconsider its prior final decision on these statutes.

Finally, the claimant has pled Education Code section 47604.4, as added by the 2002 test claim statute, which authorizes a county superintendent of schools to investigate and monitor the operation of a charter school located within the county upon receipt of a written complaint of a parent or other information. This authorization is provided in addition to the county's existing duty as a chartering authority to monitor the charter schools it has approved. The language in Education Code section 47604.4, however, authorizes, but does not mandate county superintendents of schools to act further and, therefore, staff recommends that the Commission deny the claim with respect to Education Code section 47604.4.

## **Conclusion and Recommendation**

Staff recommends that the Commission adopt the attached proposed statement of decision to partially approve this test claim.

Minor changes, including those to reflect the hearing testimony and the vote count will be included when issuing the final statement of decision.

However, if the Commission's vote on this item modifies the proposed statement of decision, staff recommends that the motion to adopt the proposed statement of decision reflect those changes, which would be made before issuing the final statement of decision. In the alternative, if the changes are significant, staff recommends that the Commission postpone this item to the next Commission hearing.

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652; Government Code Section 3540.1;

Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058

Filed on August 29, 2003 by

San Diego Unified School District, Claimant

Case No.: 03-TC-03

*Charter Schools IV*

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

*(Proposed for Adoption: January 27, 2012)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 27, 2012. [Witness list will be included in the final statement of decision.]

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

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

**COMMISSION FINDINGS**

**Chronology**

- 08/29/2003 Test claim 03-TC-03 filed by the San Diego Unified School District
- 12/24/2003 Department of Finance requests extension of time to file comments
- 01/23/2004 Department of Finance files comments
- 05/12/2004 Claimant files rebuttal comments
- 11/18/2011 Commission staff issues draft staff analysis
- 12/13/2011 Claimant files comments on the draft staff analysis and a declaration of costs for the San Diego County Office of Education

## I. BACKGROUND

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,<sup>2</sup> charter schools are exempt from most laws governing school districts.<sup>3</sup> California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.<sup>4</sup>

### Collective bargaining for charter schools

The test claim statute enacted in 1999 (Stats. 1999, ch. 828) subjects charter schools to the Educational Employment Relations Act (EERA) or “Rodda Act.”<sup>5</sup> Since 1976, the EERA has governed labor relations in California public schools with the following stated purpose:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers . . . and to afford certificated employees a voice in the formulation of educational policy.<sup>6</sup>

The EERA creates a process for groups of school district employees to organize and become represented by an employee organization,<sup>7</sup> and states the scope of representation is “limited to matters relating to wages, hours of employment, and other terms and conditions of employment.”<sup>8</sup> The EERA also defines the rules for negotiations,<sup>9</sup> mediation,<sup>10</sup> and dispute of

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<sup>2</sup> Education Code section 47601 includes these reasons, among others, in the legislative intent for establishing charter schools.

<sup>3</sup> Education Code section 47610. Exceptions to the exemption in section 47610 include teachers’ retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605(c)(1)) and teacher credentials (§ 47605(l)).

<sup>4</sup> Office of the Legislative Analyst, “Assessing California’s Charter Schools” (January 2004); <[http://www.lao.ca.gov/2004/charter\\_schools/012004\\_charter\\_schools.htm](http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm)> as of November 15, 2011.

<sup>5</sup> The EERA is Government Code section 3540 et seq. (Stats. 1975, ch. 961, eff. July 1, 1976).

<sup>6</sup> Government Code section 3540.

<sup>7</sup> Government Code section 3543.

<sup>8</sup> Government Code section 3543.2. “Terms and conditions of employment” is defined broadly to include health and welfare benefits, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for employee evaluation, organizational security, grievance procedures, layoff of probationary certificated employees, et cetera.

grievances,<sup>11</sup> and it establishes the Public Employment Relations Board to administer the EERA and referee labor disputes.<sup>12</sup>

The test claim statutes require each charter school charter to contain, “[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school....”<sup>13</sup> The EERA defines “public school employer” as “the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.*”<sup>14</sup>

If the charter school is not deemed a public school employer, the school district where the charter is located is deemed the public school employer for the purposes of the EERA.<sup>15</sup> This section also requires, “By March 31, 2000, all existing charter schools ...[to] declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.”<sup>16</sup>

The scope of representation for charter school employees may include discipline and dismissal, “if the charter ... does not specify that it shall comply with those statutes and regulations ... that establish and regulate tenure or a merit or civil service system.”<sup>17</sup>

#### Petition requirements for the establishment of charter schools and countywide charter schools

The 2002 test claim statute was enacted because, according to the legislative history of AB 1994 (Stats. 2002, ch. 1058), “charter schools lack the oversight and accountability required of other public schools.”<sup>18</sup> The catalyst was the Gateway Academy Charter School, which was approved by the Fresno Unified School District in 1998 and began operations in fall 1999.

However, the [Gateway Academy] charter was revoked by the Fresno Unified School District Board . . . after it learned that the 600-student statewide school

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<sup>9</sup> Government Code section 3543.3.

<sup>10</sup> Government Code section 3548.

<sup>11</sup> Government Code section 3543.

<sup>12</sup> Government Code section 3541.

<sup>13</sup> Education Code section 47605(b)(5)(O), Statutes 1998, chapter 828. References herein are to the Education Code unless otherwise indicated.

<sup>14</sup> Government Code section 3540.1, as amended by Statutes 1999, chapter 828 (Emphasis added).

<sup>15</sup> Education Code section 47611.5(b), Statutes 1999, chapter 828.

<sup>16</sup> Education Code section 47611.5(f), Statutes 1999, chapter 828.

<sup>17</sup> Education Code section 47611.5(c), Statutes 1999, chapter 828.

<sup>18</sup> Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002, page 1.

had accumulated a \$1.3 million debt in one year, hired teachers without credentials, and employed individuals who did not pass criminal background checks. The large debt triggered many questions including how Gateway used state and federal funding and questions about its enrollment. Inquiries suggested that one of Gateway's satellites, the Silicon Valley Academy, was providing sectarian studies and charging tuition. Numerous other accounts of violations involving Gateway have been alleged over the last several months. AB 1994 provides several key common sense reforms so charter schools are more accountable to taxpayers.

[¶]...[¶] Gateway's charter was revoked by the district governing board who cited the difficulties of keeping track of remote (satellite) operations as a reason why various anomalies were not discovered sooner.<sup>19</sup>

Consistent with this purpose, the Legislature amended Education Code section 47605, which addresses the petition requirements for proposed charter schools that are considered by K-12 school districts, to require the petition to include identification of a single charter school that will operate in the geographic boundaries of the school district, except as specified. If the charter school is to operate at multiple sites in the district, it must identify those sites in the petition, which is subject to approval by the school district governing board. If the charter school is to serve high school pupils, the charter must also include a description of how the school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements, as specified. Petitions must also include a description of the procedures to be used if the charter school closes, including a final audit of the school to determine the disposal of assets and liabilities and the transfer of pupil records. The 2002 legislation also restricted the geographic location of a charter school, allowing it to locate outside its school district, but within the county of the district, only under specified circumstances.

If the school district denies the petition for any of the reasons specified in Education Code section 47605, the petitioner may submit the petition on appeal to the county board of education. The county board of education is then required to review, consider, and hold a public hearing on the petition in the same manner as the school district. The county's review is required before the petitioner can submit its petition to the State Board of Education.

The 2002 test claim statute also added Education Code section 47605.6 to address the petition process for the proposed operation of countywide charter schools. Under this statute, county boards of education are required to hold a public hearing on the petition, and consider specified information, including whether the proposed charter school has a reasonable justification for why it could not be established by petition to a school district. The county board of education may approve a countywide petition, as specified in statute, if it determines that the proposed charter petition is consistent with sound educational practice.

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<sup>19</sup> Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002, pages 2-3.

### Oversight and accountability of charter schools

The 2002 test claim statute also amended Education Code sections 1628 and 42100 to require that each charter school approve an annual statement of its receipts and expenditures and file it with the entity that approved the charter. If that entity is a school district, the district files it with the county superintendent of schools. The county superintendent of schools is then required to verify the mathematical accuracy of the charter schools' statements and transmit them to the Superintendent of Public Instruction.

The 2002 test claim statute also added Education Code section 47604.4, which authorizes a county superintendent of schools to investigate and monitor the operation of a charter school located within the county upon receipt of a written complaint of a parent or other information. This authority is provided in addition to the county's specific duty as a chartering authority to monitor the charter schools it has approved. Under those sections, the chartering authority (whether the authority is a K-12 school district or a county board of education) is specifically required to visit each charter school annually, ensure that the charter school is in compliance with all required reports, and monitor the fiscal condition of the charter school.

### Related Commission Decisions on Charter Schools

On May 26, 1994, the Commission heard and decided the *Charter Schools* (CSM-4437) test claim, finding that Statutes 1992, chapter 781 (§§ 47605 & 47607) imposes a reimbursable state-mandated program for school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On October 26, 2000, the Commission adopted a statement of decision in *County Office Budget Process and Financial Statements* (97-TC-20) and, as part of that claim, found that Education Code section 1628, as it was originally added by Statutes 1991, chapter 1213, imposed a reimbursable state-mandated activity, beginning July 1, 1996, for the county superintendent of schools to prepare and file with the State Superintendent of Public Instruction, on forms or in a format prescribed by the State Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the county office of education for the preceding fiscal year.

On October 26, 2000, the Commission adopted a statement of decision in *School District Fiscal Accountability Reporting* (97-TC-19) and, as part of that claim, found that Education Code section 42100, as last amended by Statutes 1991, chapter 1213, imposed a reimbursable state-mandated activity, beginning July 1, 1996, on school districts and county superintendents of schools as follows:

A. Annual Statement of Receipts and Expenditures (Ed. Code, § 42100.)

School District Activities

- On or before September 15, the governing board of each school district shall file an annual statement of all receipts and expenditures of the school district for the preceding fiscal year with the county superintendent of schools.



## County Office of Education Activities

- On or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statement of receipts and expenditures for the preceding fiscal year and shall transmit a copy of the statement to the State Superintendent of Public Instruction.

On November 21, 2002, the Commission adopted its statement of decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (§§ 47605, (j)(1) & (k)(3), 47605.5, 47607, & 47614) require reimbursable state-mandated activities for school districts and county offices of education for activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions (hereafter *Charter Schools* parameters and guidelines). School districts may charge a fee from one to three percent of the charter school's revenue for "supervisory oversight" of the charter school. (§ 47613.) This fee is a recognized offset in the *Charter Schools* parameters and guidelines.

On May 25, 2006, the Commission decided the *Charter Schools III* test claim (99-TC-14)<sup>20</sup> that alleged various activities related to charter school funding and accountability, and was filed on behalf of both school districts and charter schools. The Commission found that charter schools are not eligible claimants, but found the claim partially reimbursable for school districts.

On July 28, 2006, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05) that alleged statutes that extended the collective bargaining provisions of the EERA to charter schools. The Commission denied the test claim, finding that a school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school, and that charter schools are not eligible claimants under article XIII B, section 6 of the California Constitution. The Commission also found that subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.

## **II. POSITION OF THE PARTIES**

### **A. Claimant Position**

Claimant, San Diego Unified School District (SDUSD), alleges that the test claim statutes impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. The claimant seeks reimbursement for the activities alleged to be reimbursable for chartering agencies (county boards of education and school districts), charter schools, and county offices of

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<sup>20</sup> Filed on Education Code sections 41365, 47605(b),(c),(d), (j) and (l), 47604.3, 47607(c), 47612.5, 47613 (former § 47613.7), and 47630-47664; Statutes 1996, chapter 786, Statutes 1998, chapter 34, Statutes 1998, chapter 673, Statutes 1999, chapter 162, Statutes 1999, chapter 736, Statutes 1999, chapter 78, California Department of Education Memo (May 22, 2000).

education. Claimant further alleges that school districts and county offices of education have incurred or will incur costs in excess of \$1,000 per fiscal year to perform these activities.<sup>21</sup>

Claimant's comments on the draft staff analysis include a declaration of costs from the San Diego County Office of Education.

### **B. Department of Finance's Position**

The Department of Finance asserts that charter schools are not eligible claimants because establishing and maintaining charter schools is a discretionary act that is not mandated by the state. Finance also states that other activities are discretionary and not reimbursable, such as responding to inquiries from the chartering entity (because it is discretionary for local oversight entities to request the specified information) and participating in judicial proceedings. Finance argues that school district's overseeing district schools has been a district responsibility since before 1975, so are not a new program or higher level of service. And, chartering entities have fee authority to recover costs for oversight and charter petition review. (§ 47613.)

According to Finance, there may be minor reimbursable activities to review new petition information if a school district reviews and denies a charter petition, but "these activities represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews."

### **III. DISCUSSION**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that

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<sup>21</sup> In its May 2004 rebuttal to the state agency comments, claimant asserts that the comments of the Department of Finance are incompetent and should be excluded from the record because they are not signed under penalty of perjury "with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief." (Cal. Code Regs., tit. 2, § 1183.02 (c)). While the claimant correctly states the Commission's regulation, staff disagrees with the request to exclude Finance's comments from the official record. Most of the comments from Finance argue an interpretation of the law, rather than constitute a representation of fact. If this case were to proceed to court on a challenge to the Commission's decision, the court would not require sworn testimony for argument on the law. The ultimate determination whether a reimbursable state-mandated program exists is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.)

articles XIII A and XIII B impose.”<sup>22</sup> Thus, the subvention requirement of section 6 is “directed to state mandated increases in the services provided by [local government] ...”<sup>23</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>24</sup>
2. The mandated activity either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>25</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>26</sup>
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>27</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>28</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>29</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>30</sup>

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<sup>22</sup> *County of San Diego, supra*, 15 Cal.4th 68, 81.

<sup>23</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>24</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>25</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>26</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>27</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>28</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>29</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>30</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

**Issue 1: The Commission does not have jurisdiction to reconsider Education Code sections 47605 and 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828).**

As discussed above, the test claim pleads Education Code sections 47605 and 47611.5, and Government Code section 3540.1, as added and amended by Statutes 1999, chapter 828. These statutes make the charter school, or the designated public school employer, subject to collective bargaining under the EERA (Gov. Code, § 3540 et seq.) These code sections, however, as amended by Statutes 1999, chapter 828, were the subject of a prior Commission decision. The Commission does not have jurisdiction to reconsider its prior final decision on these statutes.

At its July 28, 2006 hearing, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05), which alleged these same statutes that extend the collective bargaining provisions of the EERA to charter schools. The test claim statutes require each charter school petition to contain, “[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school...”<sup>31</sup> Moreover, the scope of representation under the EERA for charter school employees may include discipline and dismissal, “if the charter ... does not specify that it shall comply with those statutes and regulations ... that establish and regulate tenure or a merit or civil service system.”<sup>32</sup>

The Commission denied the *Charter Schools Collective Bargaining* test claim based on the following findings:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5(b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of “A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA].” (Ed Code, § 47605(b)(5)(O).)

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<sup>31</sup> Education Code section 47605(b)(5)(O), Statutes 1998, chapter 828.

<sup>32</sup> Education Code section 47611.5(c), Statutes 1999, chapter 828.

The claimant did not request reconsideration of the Commission’s decision in *Charter Schools Collective Bargaining* (99-TC-05), nor was the decision challenged in court.<sup>33</sup> Thus, the Commission’s decision in 99-TC-05 is a final, binding decision. Once a decision of the Commission becomes final and has not been set aside by a court it cannot be reconsidered.<sup>34</sup>

The Commission finds, therefore, that it does not have jurisdiction to reconsider Education Code sections 47605 and 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828).

Thus, the “test claim statutes” over which the Commission has jurisdiction in this claim (and as used in the remainder this analysis) are the following Education Code sections: 1628, 42100, 47602, 47604.3, 47605, 47613.1, 47652, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47612.1 (Stats. 2002, ch. 1058) and 47626 (Stats. 1999, ch. 828).

**Issue 2: Do the remaining test claim statutes mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution?**

**A. There is no evidence in the record that charter schools have incurred costs mandated by the state.**

The test claimant, a K-12 school district, seeks reimbursement for activities required of charter schools.

The claimant has the burden when filing a test claim to prove that new mandated activities result in increased costs mandated by the state in an amount of at least \$1,000.<sup>35</sup> In doing so, claimant must comply with the Commission’s regulations that require assertions or representation of fact be supported with documentary evidence authenticated by a declaration signed under penalty of perjury by persons authorized and competent to do so. The assertions in the declaration must be based on the declarant’s personal knowledge, information, or belief.<sup>36</sup>

The only evidence in the record of costs mandated by the state is the declaration from the accounting director of San Diego Unified School District, which states: “School districts and county offices of education have incurred or will incur costs in excess of \$1000 per fiscal year to perform the activities described in section B above.”

There is no documentary evidence in the record authenticated by declarations from employees of a charter school, or from persons authorized by a charter school who are competent to make assertions based on personal knowledge, information, or belief that charter schools have incurred costs mandated by the state for the following activities that that are performed by charter schools:

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<sup>33</sup> Government Code section 17559 authorizes any party to request reconsideration within 30 days after the statement of decision is delivered or mailed to the claimant, and authorizes the parties to challenge the Commission’s decision under Code of Civil Procedure section 1094.5.

<sup>34</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

<sup>35</sup> Government Code sections 17514, 17564.

<sup>36</sup> Former California Code of Regulations, title 2, section 1183(d)(3)(C)(4). Government Code section 17553(b)(2); California Code of Regulations, title 2, sections 1183.03, 1187.5.

- Approve an annual statement of all receipts and expenditures for the preceding fiscal year and file it with the entity that approved the charter school.<sup>37</sup>
- Promptly respond to all reasonable inquiries from a county office of education that has jurisdiction over the school’s chartering authority, including, but not limited to, inquiries regarding its financial records, and to consult with the county office regarding any inquiries.<sup>38</sup>
- Notify the county superintendent of schools of the county in which the charter school is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.<sup>39</sup>
- After receiving approval for its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the school district governing board of the additional locations.<sup>40</sup>
- For charter schools that receive approval of their petitions upon appeal to the county board of education or State Board of Education to be subject to all the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition.<sup>41</sup>
- Submit the annual financial audit reports for the preceding fiscal year to the Controller and, unless the county board of education is the chartering entity, the county superintendent of schools of the county in which the charter school is sited.<sup>42</sup>
- For a charter school that is granted a charter from the governing board of a school district on or after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, to locate in accordance with the geographic and site limitations, as specified.<sup>43</sup>
- For charter schools approved by the State Board of Education to have their average daily attendance approved by and submitted to the State Board of Education.<sup>44</sup>

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<sup>37</sup> Education Code section 42100(b), (Stats. 2002, ch. 1058).

<sup>38</sup> Education Code section 47604.3, (Stats. 2002, ch. 1058.)

<sup>39</sup> Education Code section 47604.4(b), (Stats. 2002, ch. 1058).

<sup>40</sup> Education Code section 47605(a)(4) (Stats. 2002, ch. 1058). This is also true of a charter school petition approved by a county board of education. (Ed. Code, § 47605.6(a)(3), Stats. 2002, ch. 1058.)

<sup>41</sup> Education Code section 47605(j)(1), (Stats. 2002, ch. 1058).

<sup>42</sup> Education Code section 47605(m), (Stats. 2002, ch. 1058).

<sup>43</sup> Education Code section 47605.1, (Stats. 2002, ch. 1058).

<sup>44</sup> Education Code section 47652, (Stats. 2002, ch. 1058.)

- For charter schools operated by the University of California, as specified, to declare in their charters that they are the employer of the charter school employees for the purposes of the EERA, as specified, and to amend their charters as specified.<sup>45</sup>

Accordingly, the Commission finds that the following Education Code sections, as they affect charter schools, do not impose a reimbursable state-mandated program: Education Code sections 42100 (b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47652, as amended by Statutes 2002, chapter 1058; and Education Code section 47626 as added by Statutes 1999, chapter 828. The Commission makes no findings whether charter schools are eligible to claim reimbursement pursuant to article XIII B, section 6 of the California Constitution, or whether these statutes constitute a state-mandated new program or higher level of service.

**B. Activities required of charter school petitioners are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.**

Before a charter school can be established as a local entity, a petition to establish the school must be filed with an existing school district, county office of education, or the State Board of Education. The petition can be organized by one or more persons seeking to establish a charter school, and is often organized by a group of teachers, parents and community leaders or by a community-based organization.<sup>46</sup> The test claim statutes amended the petition process, and require that the petition include additional information as follows:

- Identify a single charter school that will operate within the geographical boundaries of the district. If proposing to establish operations at additional sites, petitioners identify each location in the petition.<sup>47</sup>
- If the charter school is unable to locate within the jurisdiction of the chartering school district, to establish one site outside the boundaries of the school district but within the county within which that school district is located. If the school district where the charter proposed to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either: (A) the school has attempted to locate in a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the charter school chooses to locate; or (B) the site is needed for temporary use during a construction or expansion project.<sup>48</sup>

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<sup>45</sup> Education Code section 47626, (Stats. 1999, ch. 828.)

<sup>46</sup> Education Code section 47605(a); California Department of Education website <<http://www.cde.ca.gov/sp/cs/>> as of November 14, 2011.

<sup>47</sup> Education Code section 47605(a)(1), (Stats 2002, ch. 1058).

<sup>48</sup> Education Code section 47605(a)(5), (Stats. 2002, ch. 1058).

- If the charter school will serve high school pupils, include in the petition a description of how the school will inform parents about the transferability of courses to meet college entrance requirements, as specified.<sup>49</sup>
- Include a description of the procedures to be used if the charter school closes, as specified.<sup>50</sup>
- The description of the charter school's facilities shall specify where the school intends to locate.<sup>51</sup>
- For petitioners to provide written notice of the charter's approval and a copy of the petition to the applicable county superintendent of schools and the California Department of Education.<sup>52</sup>
- For a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education, to comply with the signature requirements<sup>53</sup> and petition notice<sup>54</sup> and petition format requirements,<sup>55</sup> as specified.

The claimant is seeking reimbursement for these activities.

However, a school district, such as San Diego Unified School District, is not a charter school petitioner. Charter school petitioners are teachers, parents, community leaders and organizations or any individual seeking to petition for a charter school.

Moreover, charter school petitioners cannot seek reimbursement under article XIII B, section 6, because petitioners are not a local governmental entity. Article XIII B, section 6 provides the right to reimbursement only for local governmental entities that are subject to the tax and spend provisions of article XIII B. The Constitution does not provide mandate reimbursement rights to individuals either as taxpayers or recipients of governmental benefits and services.<sup>56</sup>

Accordingly, the Commission finds that Education Code sections 47605(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), 47605.6(a)(1)(A) & (B), (a)(3), and (a)(4) (Stats. 2002, ch. 1058), do not impose a reimbursable state-mandated program.

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<sup>49</sup> Education Code section 47605(b)(5)(A)(ii), (Stats. 2002, ch. 1058).

<sup>50</sup> Education Code section 47605(b)(5)(P), (Stats. 2002, ch. 1058).

<sup>51</sup> Education Code section 47605(g), (Stats. 2002, ch. 1058).

<sup>52</sup> Education Code section 47605(i) & (j)(6), (Stats. 2002, ch. 1058).

<sup>53</sup> Education Code section 47605.6(a)(1)(A) & (B), (Stats. 2002, ch. 1058).

<sup>54</sup> Education Code sections 47605.6(a)(3), (Stats. 2002, ch. 1058).

<sup>55</sup> Education Code section 47605.6(a)(4), (Stats. 2002, ch. 1058).

<sup>56</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 334.



**C. Activities imposed on state agencies do not result in a state-mandated new program or higher level of service on school districts.**

The following provisions in the test claim statutes apply solely to state agencies and do not mandate school districts, county boards of education, or county superintendents of schools to perform any activities.

- Authorize the Superintendent of Public Instruction to amend reporting forms for the charter school's statement of all receipts and expenditures to accommodate changes in statute or government reporting standards,<sup>57</sup> and requires the forms to be adopted by the State Board of Education as regulations.<sup>58</sup>
- Specifies how the charter school numbering system developed by the State Board of Education works.<sup>59</sup>
- Review and approve new charter petition requirements for those petitions that are denied by a school district governing board and a county board of education and filed on appeal with the State Board of Education.<sup>60</sup>
- Authorizes the State Board of Education to review and approve petitions for state charter schools that operate at multiple sites throughout the state, and requires the State Board of Education to adopt regulations regarding charter petition review.<sup>61</sup>
- For average daily attendance generation, makes the pupil age and continuous enrollment requirements inapplicable to charter school programs in partnership with any of the following; the federal Workforce Investment Act of 1998, federally affiliated Youth Build programs, federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider, or the California Conservation Corps or local conversation corps certified by the California Conservation Corps, as specified.<sup>62</sup>
- Amends the requirements for the Superintendent of Public Instruction to make apportionments on behalf of charter schools that elect not to be funded with charter school block grants to apply to school districts in which all schools have been converted to charter schools.<sup>63</sup>

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<sup>57</sup> Education Code section 1628, (Stats. 2002, ch. 1058.)

<sup>58</sup> Education Code section 42100(c), (Stats. 2002, ch. 1058.)

<sup>59</sup> Education Code section 47602(a)(1), (Stats. 2002, ch. 1058.)

<sup>60</sup> Education Code section 47605(j)(1), (Stats. 2002, ch. 1058.)

<sup>61</sup> Education Code section 47605.8 (Stats. 2002, ch. 1058.)

<sup>62</sup> Education Code section 47612.1 (Stats. 2002, ch.; 1058.)

<sup>63</sup> Education Code section 47613.1 (Stats. 2002, ch. 1058.)

- Requires, for charter schools approved by the State Board of Education, the estimated average daily attendance to be approved by and submitted to the California Department of Education.<sup>64</sup>

Thus, the Commission finds that the state agency activities in Education Code sections 1628, 42100(c), 47602(a)(1), 47605(j)(1), 47605.8, 47612.1, 47613.1, 47652(a), as added or amended by Statutes 2002, chapter 1058, do not impose a state-mandated new program or higher level of service under article XIII B, section 6.

**D. Education Code sections 47605 addresses the charter school petition process and imposes a state-mandated new program or higher level of service on school districts and county boards of education.**

Education Code section 47605 is the statute that governs the petition process to establish a charter school. That section, as originally added in 1992, was addressed by the Commission in the *Charter Schools* test claim (CSM-4437). Prior law and the changes made by the test claim statute are discussed below.

Prior law

In the *Charter Schools* statement of decision (CSM-4437), the Commission found that section 47605 (Stats. 1992, ch. 781) imposes a reimbursable state-mandated program on school districts and county boards of education for activities related to processing initial charter school petitions. School districts are required to review charter school petitions according to the standards and instructions in section 47605(b). A school district is required to grant a charter school petition if the district is satisfied that the charter is consistent with sound educational practice. School districts must cite facts and make written findings in accordance with the statute in order to reject a charter petition (§ 47605(b)). When the *Charter Schools* test claim was approved, Education Code section 47605(b) stated in relevant part the following:

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. . . A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

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<sup>64</sup> Education Code section 47652(a) (Stats. 2002, ch. 1058.)

(1) the charter school presents an unsound educational program for the pupils in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a) [from parents or guardians, and teachers]

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d) [i.e., that the charter school is nonsectarian, will not charge tuition, and will not discriminate against any pupil].

(5) The petition does not contain reasonably comprehensive descriptions of all the following:

. . . . [Listing A through P categories, including for example, a description of the governance structure, suspension and expulsion procedures, employee qualifications and rights, and measurable pupil outcomes].

The school district governing board must require the petitioner(s) to provide information regarding the proposed operation and potential effects of the school, including the facilities to be used, the manner in which administrative services are to be provided, and potential civil liability effects upon the school and the district, for the district's review and consideration. The petitioner shall also provide financial statements that include a proposed first-year operational budget, including startup costs, and financial projections for the first three years of operation.

Under prior law, if a school district denied a charter school petition, the petitioner was authorized to submit the charter school petition to either the county board of education or the State Board of Education. If a county board of education received a petition, it was required to review the petition pursuant to all the requirements in section 47605(b).

These provisions are still in the law today. Although school districts and county boards of education retain discretion in the manner of the review and approval or denial of a charter petition, the review itself and the findings required on review are not discretionary.

Thus, the parameters and guidelines for *Charter Schools* include the following reimbursable activities for school districts and county superintendents of schools:

- Review and evaluate qualified charter petitions for compliance with criteria for the granting of charters. (§ 47605.)
- Prepare for public hearings, to be done within thirty days of receiving the petition, to consider the level of community support for a charter school petition, and grant or deny the charter school petition within sixty days of receiving the petition, subject to one thirty-day continuance by agreement of the parties. (§ 47605.)

#### The 2002 test claim statute

The 2002 test claim statute made several amendments to the charter school petition requirements that affect the review and consideration by a K-12 school district when the school district receives a petition for the establishment of a charter school pursuant to Education Code section

47605(a). The test claim statute amended section 47605(b)(5) by requiring school districts to review and consider at a public hearing the following additional information in the petition:

- If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.<sup>65</sup>
- A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.<sup>66</sup>

The test claim statute also amended section 47605(a) and (g) by requiring school districts to require charter school petitioners to provide the following additional information for the school district's review and consideration:

- A description of where the charter school intends to locate in its description of facilities.<sup>67</sup> The test claim statute allows charter petitioners to propose to operate at multiple sites within a school district as long as each location is identified in the charter school petition. Charter school petitioners are also now authorized to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located, if the following conditions are satisfied:
  - Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
  - Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
  - Either the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.<sup>68</sup>

If the school district denies the petition based on this additional information (for example, because the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition), the district is required to make written factual findings, specific to the particular petition, setting forth facts to support the findings.

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<sup>65</sup> Education Code section 47605(b)(5)(A)(ii).

<sup>66</sup> Education Code section 47605(b)(5)(P).

<sup>67</sup> Education Code section 47605(g).

<sup>68</sup> Education Code section 47605(a)(1) and (a)(5). There is no requirement in the statute that the school district that reviews the proposed charter petition issue the notices authorized by statute. The requirement for the school district chartering authority is to review the petition to determine if proper notice has been provided.

In addition, the 2002 test claim statute amended Education Code section 47605(j)(1) to require that when a K-12 school district denies a charter school petition, the petitioner may submit the petition for a charter school on appeal to the county board of education. The county board of education is required to re-review and consider at a public hearing the provisions of the charter in accordance with the requirements outlined in section 47605. Only if the county board of education denies the petition, can the petition be submitted to the State Board of Education. Under prior law, the charter school petition could be appealed to either the county board of education or the State Board of Education immediately following a denial by a K-12 school district. Section 47605(j)(1), as amended, (and shown in ~~strikeout~~ and underline) states the following:

If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to ~~either the county board of education or directly to the State Board of Education~~. The county board of education ~~or the State Board of Education, as the case may be~~, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition. A charter petition that is submitted to either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

As a result of the test claim statute, county boards of education may experience an increase in the number of charter school petitions filed on appeal. Reviewing a denied charter petition based on the original petition requirements in section 47605, however, is a service that county boards of education provided before the 2002 test claim legislation. These activities are not newly required by the test claim statutes in the present claim, but are eligible for reimbursement under the *Charter Schools* (CSM 4437) program.

The test claim statute, however, continues to make clear that county boards of education are required to review and approve charter school petitions in accordance with subdivision (b), and further requires that the petitions “meet all otherwise applicable petition requirements.” As indicated above, section 47605 was amended to require new information to be included in the petition. Thus, like K-12 school districts, county boards of education are also required to review and consider at a public hearing the following new information on appeal:

1. Review and consider at a public hearing the following additional information in the charter school petition:

- a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.<sup>69</sup>
  - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.<sup>70</sup>
  - c) A description of where the charter school intends to locate in its description of facilities.<sup>71</sup>
  - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
    - (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
    - (2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
    - (3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.<sup>72</sup>
2. If, after review, the school district or county board of education denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.<sup>73</sup>

Based on the plain language of the statute,<sup>74</sup> the Commission finds that these requirements are mandated by the state for K-12 school districts that review petitions for the establishment of a charter school pursuant to Education Code section 47605(a) and for county boards of education performing the review on appeal pursuant to Education Code section 47605(j). Since these activities were not required by prior law, they constitute a new program or higher level of service. In addition, these activities are unique to K-12 school districts and county boards of education, and carry out the governmental function of providing a service to the public by providing additional notification and oversight in order to prevent the kind of problems that

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<sup>69</sup> Education Code section 47605(b)(5)(A)(ii).

<sup>70</sup> Education Code section 47605(b)(5)(P).

<sup>71</sup> Education Code section 47605(g).

<sup>72</sup> Education Code section 47605(a)(1) and (5).

<sup>73</sup> Education Code section 47605(b).

<sup>74</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

occurred with the Gateway Academy charter school discussed in the legislative history of the test claim statute.<sup>75</sup>

The 2002 test claim statute also added subdivision (a)(4) to section 47605 to require the authority that granted the charter (either a K-12 school district or a county board of education) to:

- Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.

The Commission finds that this requirement constitutes a mandated new program or higher level of service on both K-12 school districts and county boards of education.

Finally, claimant seeks reimbursement for school districts and county boards of education to review “cashflow” projections for the first three years of the charter school operations pursuant to Education Code section 47605(g), as amended by the 2002 test claim statute. That section states in relevant part the following: “The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.” This requirement, however, is not new and was not changed by the test claim statute. The requirement to review cashflow projections for the first three years of operation was added by the Legislature in 1998 (Stats. 1998, ch. 673). The 1998 statute has not been pled in this test claim. The 2002 test claim statute did not make any substantive changes to subdivision (g), but simply changed “cash-flow” to “cashflow.” Thus, the activity to review a charter school’s cash flow pursuant to Education Code section 47605(g) does not mandate a new program or higher level of service.

**E. Education Code section 47605.6, as added by the 2002 test claim statute, addresses the charter school petition process for the proposed operation of a countywide charter school, and mandates a new program or higher level of service on county boards of education.<sup>76</sup>**

Education Codes section 47605.6 was added by the 2002 test claim statute and governs petitions for the operation of a “countywide” charter school that operates at one or more sites within the geographic boundaries of the county and that provides instruction services that are *not* generally provided by a county office of education.<sup>77</sup> The county board of education is required by the statute to hold a public hearing on the provisions of the countywide charter, as specified below:

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<sup>75</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

<sup>76</sup> Education Code section 47605.6 was also amended in 2005 to add requirements to the countywide petition for a charter school. The 2005 statute has not been pled and no findings are made on those provisions.

<sup>77</sup> Petitions filed with a county board of education for charter schools that will service pupils for whom the county office of education *does* provide direct education and related services is

1. Hold a public hearing not later than 60 days after receiving a petition to consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. As part of its consideration, the county board of education shall do the following:<sup>78</sup>
  - a. Require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education.
  - b. Require the petitioner or petitioners to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.
  - c. Determine whether the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county.
  - d. Determine whether granting the charter is consistent with a sound educational practice and whether the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Education Code section 47605.
  - e. Give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Education Code section 54032.
2. The county board of education shall also consider the information listed below and deny a petition for the establishment of a charter school if the board finds one or more of the following:<sup>79</sup>
  - a. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

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governed by Education Code section 47605.5. Section 47605.5 was addressed by the Commission in *Charter Schools II* (99-TC-03).

<sup>78</sup> Education Code section 47605.6(a)(1), (h), (i).

<sup>79</sup> Education Code section 47605.6(b). Unlike a school district's consideration and review of a charter school petition under section 47605, section 47605.6 does not require county boards of education to make written factual findings when denying a petition. Section 47605.6(b) simply states that the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. The date can be extended by 30 days with the agreement of all parties.



- b. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- c. The petition does not contain the number of signatures required.
- d. The petition does not contain an affirmation of each of the following conditions listed in subdivision (d):
  - 1) That the charter school will meet all statewide standards and conduct the pupil assessments required pursuant to Education Code section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in non-charter public schools,
  - 2) That the charter school will consult with their parents and teachers regarding the school's educational programs.
- e. The petition does not contain reasonably comprehensive descriptions of all of the following:
  - 1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.
  - 2) The measurable pupil outcomes identified for use by the charter school.
  - 3) The method by which pupil progress in meeting those pupil outcomes is to be measured.
  - 4) The location of each charter school facility that the petitioner proposes to operate.
  - 5) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.
  - 6) The qualifications to be met by individuals to be employed by the school.
  - 7) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.
  - 8) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.
  - 9) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.
  - 10) The procedures by which pupils can be suspended or expelled.

- 11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
  - 12) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.
  - 13) A declaration whether or not the charter school shall be deemed the exclusive public school employer for the employees of the charter school for the purposes of the EERA.
3. The county board of education shall also consider whether to approve additional locations subsequently proposed by a charter school following the initial approval of the charter petition as a material revision of the charter at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located.<sup>80</sup>

The Commission finds that these activities are newly required of county boards of education, are unique to county boards of education, and carry out the governmental function of providing a service to the public by providing additional notification and oversight of countywide charter schools. The Commission therefore finds that Education Code section 47605.6 as added by the 2002 test claim statute constitutes a mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

**F. Education Code section 47604.4 does not impose mandated duties on county superintendent of schools.**

Education Code section 47604.4, as added by the 2002 test claim statute, authorizes a county superintendent of schools to investigate and monitor the operation of a charter school located within the county upon receipt of a written complaint of a parent or other information. Section 47604.4 provides in relevant part the following:

In addition to the authority granted by Section 47604.3, a county superintendent of schools *may*, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within that county and conduct an investigation into the operations of that charter school. If a county superintendent of schools monitors or investigates a charter school pursuant to this section, the county office of education shall not incur any liability beyond the cost of the investigation. (Emphasis added.)

The authorization for the county superintendent of schools to investigate and monitor a charter school upon receipt of a complaint pursuant to section 47604.4 is authority that is provided in addition to the county's specific duty required by Education Code sections 47604.3 and 47604.32 as a chartering authority to monitor the charter schools it has approved. Under those sections, the chartering authority (whether the authority is a K-12 school district or a county board of education) is specifically required to visit each charter school annually, ensure that the

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<sup>80</sup> Education Code section 47605.6(a)(3).

charter school is in compliance with all required reports, and monitor the fiscal condition of the charter school.<sup>81</sup>

The language in Education Code section 47604.4, however, authorizes, but does not mandate county superintendents of schools to act further.

Accordingly, the Commission finds that Education Code section 47604.4, as added by the 2002 test claim statute, does not constitute a state-mandated program.

**G. Education Code sections 1628 and 42100 mandate a new program or higher level of service on K-12 school districts and county boards of education.**

Education Code section 42100(b), as amended by Statutes 2002, chapter 1058, requires each charter school to approve, on or before September 15, an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and file the statement with the charter authority (the entity that approved the charter school). As indicated in the discussion above, both K-12 school districts and county boards of education are required to review and consider a charter petition and may approve the charter school. If a school district is the entity that approved the charter, section 42100(a), as amended by the test claim statute, requires the governing board of the school district to include with its annual statement of receipts and expenditures the statement received from the charter school, and file both statements with the county superintendent of schools on or before September 15 of each year.<sup>82</sup> The county superintendent of schools is then required by section 42100(a) to verify the mathematical accuracy of the statements received from the charter schools and the K-12 school districts, and pursuant to Education Code section 1628, prepare its own statement of receipts and expenditures and transmit all statements (from the charter school, the school district, and the county) to the State Superintendent of Public Instruction.

Under prior law, school districts were required to prepare and approve their own annual statement of receipts and expenditures and file it with the county superintendent of schools. The county would then verify the accuracy of the school district's statement and file it with the State Superintendent of Schools. The county superintendent of schools also had to prepare and file an annual statement of receipts and expenditures for the county office of education and file it with the State Superintendent of Schools.<sup>83</sup>

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<sup>81</sup> Education Code sections 47604.3 and 47604.32 have not been pled in this claim, and will not be analyzed here.

<sup>82</sup> School districts are also required by law to assess the fiscal condition of the charter school pursuant to Education Code sections 47604.32 and 47604.33. Statutory fee authority is available for this and other supervisory oversight activities pursuant to Education Code section 47613. These statutes, however, have not been pled in this test claim, and staff makes no findings on these statutes or activities.

<sup>83</sup> Former Education Code sections 1628 and 42100, as last amended by Statutes 1991, chapter 1213. These activities are eligible for reimbursement in *School District Budget Process* (97-TC-19) and *County Office Budget Process and Financial Statements* (97-TC-20).

The test claim statute now requires the following new activities:

- School districts, when acting as the chartering authority, are required to include the charter school's annual statement of receipts and expenditures with its own annual statement, and file the charter school's statement with the county superintendent of schools.
- County superintendents of schools are required to receive from a school district (when the school district is the chartering authority) or receive directly from a charter school (when the county board of education is the chartering authority) the charter schools' annual statement of receipts and expenditures.
- County superintendents of schools are required to verify the mathematical accuracy of the charter schools' annual statements of receipts and expenditures, and transmit the charter schools' statements to the State Superintendent of Schools.

Letters issued by the California Department of Education with respect to these activities further explain prior law and the effect of the 2002 test claim statute. In a May 22, 2000 letter from the California Department of Education (CDE), charter granting agencies were required to include charter school financial information in the granting agency's annual statement of all receipts and expenditures. This letter was found to be a reimbursable "executive order" in the *Charter Schools III* (99-TC-14) statement of decision, but only for the period between May 22, 2000 and June 30, 2001. This is because the CDE sent another letter to county superintendents dated April 5, 2004, that states:

The submission of charter school financial data to CDE has been optional for the past two fiscal years. Now that the regulations and reporting formats required by *Education Code* sections 1628 and 42100 (as amended by AB 1994) are in place, **charter school financial reporting is required for fiscal year 2003-2004 and for subsequent fiscal years.**<sup>84</sup> [Emphasis in original.]

The Commission finds that the activities bulleted above constitute a state-mandated a new program or higher level of service. These activities carry out the governmental function of providing a service to the public, and impose unique requirements on school districts and county superintendents of schools that do not apply generally to all residents and entities in the state.<sup>85</sup> The public receives a benefit from charter school financial reports that are forwarded to and verified by county superintendent of schools because the reporting advances the goal of fiscal responsibility in charter school expenditures of taxpayer dollars.

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<sup>84</sup> California Department of Education, letter to county and district superintendents, county and district chief business officials, and charter school administrators, April 5, 2004. See <<http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp>> as of November 14, 2011.

<sup>85</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

**Issue 3: Education Code sections 47605, 47605.6, 1628, and 42100(a), as added or amended by the 2002 test claim statute, impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556.**

As indicated above, Education Code sections 47605, 47605.6, 1628 and 42100(a) mandate a new program or higher level of service on school districts, county boards of education, and county superintendents of schools. In order for these activities to be reimbursable under article XIII B, section 6 of the California Constitution, they must impose “costs mandated by the state.” Government code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contends that all activities required by the test claim statutes result in increased costs mandated by the state within the meaning of Government Code section 17514. The claimant’s declarations of costs are intended to cover all activities claimed, and assert that no exception to reimbursement identified in Government Code section 17556 applies to this claim.

The Department of Finance argues that school districts have fee authority provided by Education Code section 47613 sufficient to pay for the mandated activities and, thus, this test claim should be denied pursuant to Government Code section 17556(d).

Government Code section 17556(d) states that the Commission cannot find costs mandated by the state 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.”

Education Code section 47613 authorizes a chartering authority to charge fees to charter schools based on a small percentage of the charter school’s revenue (either 1% or 3% depending on whether the charter school can obtain rent-free facilities from the chartering authority) “for the actual costs of supervisory oversight.” “Chartering authority” is defined in the statute to mean “a school district, county board of education, or the state board, that granted the charter to the charter school.” Education Code section 47613 states in relevant part the following:

(a) Except as set forth in subdivision (b), a chartering authority may charge for the actual costs of supervisory oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering authority may charge for the actual costs of supervisory oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.

[¶]...[¶]

(e) For the purposes of this section, a chartering authority means a school district, county board of education, or the state board, that granted the charter to the charter school.

(f) For purposes of this section, “revenue of the charter school” means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.<sup>86</sup>

Thus, the issue is whether the fee authority in section 47613 for “supervisory oversight” applies to the activities mandated by Education Code sections 47605, 47605.6, 1628, and 42100(a), as added or amended by the 2002 test claim statute, and if so, whether the revenue from the fee authority is sufficient to pay for the mandated activities. These issues are discussed below.

**A. The fee authority in Education Code section 47613 does not apply to the consideration and approval of a charter school petition by a school district or county board of education pursuant to Education Code sections 47605 and 47605.6.**

The fee authority in section 47613 does not apply to the activities required to review and consider at a public hearing the information required by Education Code sections 47605 or 47605.6 to be included in the charter school petition, since the proposed charter has not yet been approved. The plain language of Education Code section 47613 states that the fee may be charged against the revenue of a charter school. Charter school petitioners are not yet a charter school and cannot receive revenue until the charter is approved. Thus, Government Code section 17556(d) does not apply to deny this claim with respect to the activities mandated by sections 47605 or 47605.6 to review and consider the information in the charter school petition, or hold hearings or make specific findings supporting a denial of the petition based on the additional information. Nor is there any evidence in the law or the record that other exceptions identified in Government Code section 17556 apply to deny reimbursement for these activities. Thus, the Commission finds that the activities mandated by Education Code section 47605 or 47605.6 as they relate to the consideration and approval of a charter petition impose costs mandated by the state on school districts and county boards of education within the meaning of Government Codes section 17514.

**B. The fee authority in Education Code section 47613 applies to the mandated activities performed by K-12 school districts and county school agencies when they act as the “chartering authority.”**

Education Code section 47613 authorizes a chartering authority to charge either one or three percent of a charter school’s revenue for the actual costs of “supervisory oversight.” “Chartering authority” is defined as either the school district or the county board of education that granted the charter petition. As indicated above, school districts and county school agencies, as chartering authorities, perform the following activities:

- Consider at an open and public meeting, proposed material revisions to an already approved charter pursuant to Education Code sections 47605(a)(4) and 47605.6(a)(3).

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<sup>86</sup> “A charter school is eligible for its share of state and local public education funds, which share is calculated primarily, as with all public schools, on the basis of its ADA. (Ed. Code, § 47612; see also *id.*, § 47630 et seq.)” *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1186.

- K-12 school districts that approved a charter petition are required to include the charter school’s annual statement of receipts and expenditures for the preceding fiscal year with the school district’s own annual statement and file it with the county superintendent of schools by September 15 each year pursuant to Education Code section 42100(a).
- County superintendents of schools are required to receive, by September 15, the annual statement of receipts and expenditures directly from a charter school whose petition was approved by the county board of education pursuant to Education Code section 42100(a).

Although the language of Education Code section 47613 does not expressly state that the supervisory oversight fee applies to these charter authority activities, section 47613 has been interpreted broadly and, as interpreted, would apply to these activities.

The fee authority in section 47613 was originally enacted in 1998 as section 47613.7.<sup>87</sup> In *Wilson v. State Board of Education*, the court determined the validity of the Charter Schools Act and recognized in its analysis that the chartering authority – whether the authority is a school district, county, or the state – has supervisory oversight over their charter schools based on Education Code sections 47604.3, 47607, and 47613.7.<sup>88</sup> Section 47613.7 was the fee authority statute at the time, and similarly authorized chartering authorities (including school districts and county boards of education) to charge either one or three percent of the charter school’s revenue for “supervisory oversight.” Section 47604.3 requires the charter school to respond to and consult with the chartering authority regarding “all reasonable inquiries,” including financial inquiries, of the chartering authority. Section 47607 further provides that “the authority that granted the charter may inspect or observe any part of the charter school at any time.” That section also requires that a renewal or material revision to the charter is governed by the standards and criteria identified in section 47605. Sections 47605(a)(4) and 47605.6(g) impose the mandate to consider at an open and public meeting proposed material revisions to an already approved charter.

In 2003, as a result of an audit by the Bureau of State Audits, sections 47604.32 and 47604.33 were added to the Education Code to clarify that the chartering authority’s “supervisory oversight” fee is for chartering authorities to “monitor the fiscal condition of each charter school under its authority” and to “ensure that each charter school under its authority complies with all reports required of charter schools by law.”<sup>89, 90</sup> These reports are required to be provided to the

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<sup>87</sup> Statutes 1998, chapter 34.

<sup>88</sup> *Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1142.

<sup>89</sup> Assembly Committee on Education, Analysis of AB 1137 (2003-2004 Reg. Sess.) as amended March 27, 2003, page 6. The Bureau of State Audits found that the chartering agencies they reviewed could not document that the fees they charged corresponded to the actual costs of oversight. (Bureau of State Audits, “California’s Charter Schools: Oversight At All Levels Could Be Stronger to Ensure Charter Schools’ Accountability” November 2002, page 3.)

In 2007, the Legislature amended Education Code section 47613 to require the California Research Bureau to “prepare and submit to the Legislature . . . a report on the key elements and

chartering authority and the county superintendent of schools, or only to the county superintendent of schools when the county board of education is the chartering authority. One of the reports required of the charter school is the final unaudited report on the budget for the full prior year that is due on or before September 15. This report would include the charter school's annual statement of receipts and expenditures.

Thus, the Commission finds that the supervisory oversight fee authority provided in Education Code section 47613 applies to the activities bulleted above that are imposed on the charter authority. However, there is no evidence in the record that the one or three percent fee revenue is sufficient to pay for the costs incurred to perform these mandated activities, as required by Government Code section 17556(d). There is no evidence in the record showing the actual costs of the mandated activities, or the amount of revenue received by school districts and counties. At the time this test claim was filed, claimants only had to estimate costs for all claimed activities to be at least \$1,000.<sup>91</sup> Moreover, the fee revenue applies to other oversight activities that are not included in this test claim.<sup>92</sup>

Accordingly, the Commission finds that the charter authority activities listed below impose costs mandated by the state within the meaning of Government Code section 17514. Fee revenue received by a school district or county pursuant to Education Code section 47613 and applied to these activities will be identified as offsetting revenue in the parameters and guidelines.

- Consider at an open and public meeting, proposed material revisions to an already approved charter pursuant to Education Code sections 47605(a)(4) and 47605.6(a)(3).
- K-12 school districts that approved a charter petition are required to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year pursuant to Education Code section 42100(a).
- County superintendents of schools are required to receive, by September 15, the annual statement of receipts and expenditures directly from a charter school whose petition was approved by the county board of education pursuant to Education Code section 42100(a).

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actual costs of charter school oversight" for purposes of the supervisory oversight fee in section 47613. (§ 47613(g), Stats. 2007, ch. 650.) That report has not yet been issued.

<sup>90</sup> Education Code section 47604.32(c) & (d).

<sup>91</sup> Government Code section 17564. In its declaration of costs for the San Diego County Office of Education submitted in December 2011, claimant alleges costs "greatly exceeding \$1,000."

<sup>92</sup> For example, Education Code section 47604.32 requires chartering authorities to visit each charter school at least annually; ensure that the charter school complies with all reports required by law; monitor the fiscal condition of each charter school; and provide timely notification to the state when a renewal of a charter is granted or denied, the charter is revoked, or the charter school ceases operation.



**C. The fee authority in Education Code section 47613 does not apply to the mandated activities performed by the county superintendent of schools to verify the mathematical accuracy and transmittal of the charter schools' annual statements of receipts and expenditures pursuant to Education Code sections 1628 and 42100(a).**

As indicated above, the fee authority in Education Code section 47613 applies only to the activities performed by a chartering authority. County superintendents of schools are also required to verify the mathematical accuracy of the charter school's statement of receipts and expenditures and transmit the charter schools' statements to the State Superintendent of Public Instruction pursuant to Education Code sections 1628 and 42100(a).

These activities, however, are mandated to be performed by the county superintendent of schools regardless of whether the county board of education approved the charter petition. They are not mandated on the county superintendent of schools as the "chartering authority." Thus, the Commission finds that the supervisory oversight fee in Education Code section 47613 does not apply to the activities of verifying the mathematical accuracy of the charter school's statement of receipts and expenditures and transmitting the charter schools' statements to the State Superintendent of Public Instruction pursuant to Education Code sections 1628 and 42100(a).

Moreover, there is no evidence in the record that any other exception identified in Government Code section 17556 applies to these activities.

Accordingly, the Commission finds that these activities impose costs mandated by the state within the meaning of Government Code section 17514.

#### **IV. CONCLUSION**

The Commission concludes that Education Code sections 47605, 47605.6, 1628, and 42100(a) (as added or amended by Stats. 2002, ch. 1058) impose a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, beginning January 1, 2003, as follows.

- A. When a K-12 school district receives a petition for the establishment of a charter school pursuant to Education Code section 47605(a), and when a county board of education receives a petition for the establishment of a charter school on appeal pursuant to Education Code section 47605(j), K-12 school districts and county boards of education are eligible to receive reimbursement for the following activities:
1. Review and consider at a public hearing the following additional information in the charter school petition:
    - a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.<sup>93</sup>
    - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of

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<sup>93</sup> Education Code section 47605(b)(5)(A)(ii).

all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.<sup>94</sup>

- c) A description of where the charter school intends to locate in its description of facilities.<sup>95</sup>
  - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
    - 1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
    - 2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
    - 3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.<sup>96</sup>
  2. If, after review, the school district or county board of education denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.<sup>97</sup>
  3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.<sup>98</sup>
- B. When county boards of education receive a petition for the establishment of a countywide charter school pursuant to Education Code section 47605.6, county boards of education are eligible to receive reimbursement for the following activities:
1. Hold a public hearing not later than 60 days after receiving a petition to consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. As part of its consideration, the county board of education shall do the following:<sup>99</sup>
    - a) Require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited

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<sup>94</sup> Education Code section 47605(b)(5)(P).

<sup>95</sup> Education Code section 47605(g).

<sup>96</sup> Education Code section 47605(a)(1) and (5).

<sup>97</sup> Education Code section 47605(b).

<sup>98</sup> Education Code section 47605(a)(4).

<sup>99</sup> Education Code section 47605.6(a)(1), (h), (i).

to, the facilities utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education.

- b) Require the petitioner or petitioners to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.
  - c) Determine whether the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services, and that cannot be served as well by a charter school that operates in only one school district in the county.
  - d) Determine whether granting the charter is consistent with a sound educational practice, and whether the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Education Code section 47605.
  - e) Give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Education Code section 54032.
2. The county board of education shall also consider the information listed below and deny a petition for the establishment of a charter school if the board finds one or more of the following:<sup>100</sup>
- a) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
  - b) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
  - c) The petition does not contain the number of signatures required.
  - d) The petition does not contain an affirmation of each of the following conditions listed in subdivision (d):
    - 1) That the charter school will meet all statewide standards and conduct the pupil assessments required pursuant to Education Code section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in non-charter public schools.

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<sup>100</sup> Education Code section 47605.6(b). Unlike a school district's consideration and review of a charter school petition under section 47605, section 47605.6 does not require county boards of education to make written factual findings when denying a petition. Section 47605.6(b) simply states that the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. The date can be extended by 30 days with the agreement of all parties.

- 2) That the charter school will consult with their parents and teachers regarding the school's educational programs.
- e) The petition does not contain reasonably comprehensive descriptions of all of the following:
- 1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.
  - 2) The measurable pupil outcomes identified for use by the charter school.
  - 3) The method by which pupil progress in meeting those pupil outcomes is to be measured.
  - 4) The location of each charter school facility that the petitioner proposes to operate.
  - 5) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.
  - 6) The qualifications to be met by individuals to be employed by the school.
  - 7) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.
  - 8) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.
  - 9) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.
  - 10) The procedures by which pupils can be suspended or expelled.
  - 11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
  - 12) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.
  - 13) A declaration whether or not the charter school shall be deemed the exclusive public school employer for the employees of the charter school for the purposes of the EERA.

3. The county board of education shall also consider whether to approve additional locations subsequently proposed by a charter school following the initial approval of the charter petition as a material revision of the charter at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located.<sup>101</sup>
- C. K-12 school districts and county superintendents of schools are eligible for reimbursement for following activities pursuant to Education Code sections 1628 and 42100(a):
1. For school districts, following the approval of a charter petition and as the charter authority, to include the charter school's annual statement of receipts and expenditures with its own annual statement, and file the charter school's statement with the county superintendent of schools.
  2. For county superintendents of schools to receive from a school district (when the school district is the chartering authority) or receive directly from a charter school (when the county board of education is the chartering authority) the charter schools' annual statement of receipts and expenditures.
  3. For county superintendents of schools to verify the mathematical accuracy of the charter schools' annual statements of receipts and expenditures, and transmit the charter schools' statements to the State Superintendent of Schools.

In addition, any revenue received pursuant to the "supervisory oversight" fee authority in Education Code section 47613 and applied to the charter authority activities listed above in A.3 (Ed. Code, § 47605(a)(4)) , B.3 (Ed. Code, § 47605.6(a)(3)), C.1 (Ed. Code, § 42100(a)), and C.2 (Ed. Code, § 42100(a), only when the county board of education is the charter authority and receives directly from a charter school its annual statement of receipts and expenditures), shall be identified as an offset and deducted from the costs claimed for these activities.

The Commission further finds that all other statutes pled in the test claim do *not* constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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<sup>101</sup> Education Code section 47605.6(a)(3).